

08:41:54 1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

3 UNITED STATES AUTOMOBILE ) (  
ASSOCIATION ) ( CIVIL ACTION NO.  
4 VS. ) ( 2:18-CV-245-JRG  
6 ) ( MARSHALL, TEXAS  
7 WELLS FARGO BANK, N.A. ) ( OCTOBER 30, 2019  
9:25 A.M.  
8

9 TRANSCRIPT OF VOIR DIRE OF THE JURY PANEL

10 MORNING SESSION

11 BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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29 Official Court Reporter  
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36  
37 (Proceedings recorded by mechanical stenography, transcript  
38 produced on a CAT system.)

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## 1 P R O C E E D I N G S

09:25:28 2 (Venire panel in.)

09:25:28 3 COURT SECURITY OFFICER: All rise.

09:25:29 4 THE COURT: Thank you. Be seated.

09:25:51 5 Good morning, ladies and gentlemen. Thank you for  
09:26:04 6 being here.09:26:04 7 My name is Rodney Gilstrap, and I am the Chief  
09:26:10 8 United States District Judge for the U.S. District Court  
09:26:12 9 for the Eastern District of Texas.09:26:15 10 I have lived in Marshall since 1981 when I got out  
09:26:19 11 of law school. I practiced law in this community and in  
09:26:22 12 the surrounding area for 30 years before I was appointed to  
09:26:27 13 this position. I've been on the bench here since 2011.09:26:32 14 Also, I will confess to you, I was not born in the  
09:26:35 15 State of Texas. I was born in Florida. But I got here as  
09:26:38 16 quick as I could.09:26:39 17 I came to Texas at the age of 18 to attend college  
09:26:44 18 at Baylor University, and stayed there to complete my  
09:26:47 19 studies at Baylor Law School. I'm married, I have two  
09:26:51 20 grown children. And my wife owns and operates a retail  
09:26:54 21 floral business here in Marshall.09:26:56 22 Now, I tell you all these things about myself  
09:27:00 23 because in a few minutes, I'm going to ask each of you to  
09:27:03 24 tell me the same kind of information about yourselves, and  
09:27:06 25 I think you're entitled to know as much about me as I'm

09:27:09 1 about to find out about each of you.

09:27:12 2 We are about to engage in the selection of a jury  
09:27:16 3 in a civil case involving allegations of patent  
09:27:19 4 infringement. However, before we go any further, I'd like  
09:27:24 5 to briefly review with you how we came to have our jury  
09:27:29 6 trial system for civil cases such as this.

09:27:31 7 If you go back in ancient history and if you look  
09:27:35 8 at the Pentateuch, the first five books of the Old  
09:27:39 9 Testament, you'll see that the ancient Jewish Nation  
09:27:42 10 empaneled juries to determine issues of property ownership  
09:27:45 11 and property value.

09:27:47 12 The ancient Greeks began using a jury system about  
09:27:51 13 1500 BC. The Romans, as they did with most things, copied  
09:27:56 14 the jury system and borrowed it from the Greeks. And it  
09:28:00 15 was the Romans that brought the jury system to what we now  
09:28:04 16 know to be Great Britain when they conquered that island in  
09:28:09 17 the 4th century AD.

09:28:10 18 And by the 12th century AD, jury trials had been a  
09:28:16 19 part of the ordinary, established life in Great Britain for  
09:28:19 20 800 years.

09:28:21 21 But then in the 12th century, a tyrannical king  
09:28:24 22 came to the throne of Great Britain named King John, and  
09:28:27 23 King John became embroiled in multiple disputes with his  
09:28:33 24 nobles that led that country to the verge of civil war.  
09:28:37 25 One of those disputes was King John's efforts to do away

09:28:41 1 with the right to trial by jury.

09:28:43 2 Civil war was avoided by an agreement reached

09:28:46 3 between the King and his nobles through a document you've

09:28:47 4 all heard of called the Magna Carta signed at a place

09:28:51 5 called Runnymede.

09:28:52 6 In fact, ladies and gentlemen, the language in the

09:28:55 7 Magna Carta that addresses the right to trial by jury has

09:29:00 8 been adopted in the state constitutions of 28 of our United

09:29:06 9 States adopted verbatim directly out of the Magna Carta.

09:29:09 10 So you can see that the concept of the right to

09:29:14 11 trial by jury was well ingrained in our Founding Fathers

09:29:18 12 when they came to this continent from Great Britain as

09:29:21 13 British colonists.

09:29:24 14 And the right to trial by jury through those

09:29:28 15 British colonists flourished in America for over a hundred

09:29:35 16 years until another tyrannical king came to the throne of

09:29:35 17 Great Britain. This time his name was King George, the

09:29:38 18 III. And like King John, King George, III, sought to do

09:29:42 19 away with the right to trial by jury among his colonists'

09:29:46 20 subjects here in America.

09:29:47 21 Thomas Jefferson, in writing the Declaration of

09:29:51 22 Independence, which spells out the specific reasons why we

09:29:56 23 needed to break from the mother country and form our own

09:30:00 24 independent nation, lists the king's attempts to do away

09:30:05 25 with the right to trial by jury as one of the specific

09:30:07 1 reasons in the Declaration of Independence as to why we  
09:30:12 2 should seek our own independent status.

09:30:14 3 After we did achieve our independent status as our  
09:30:20 4 own nation, we adopted certain governing documents; first,  
09:30:24 5 something called the Articles of Confederation.

09:30:27 6 They didn't work so well. So we adopted a new  
09:30:30 7 governing document for this country called the  
09:30:33 8 Constitution.

09:30:37 9 And after the adoption of the Constitution, there  
09:30:39 10 were 10 important amendments added to what you all know to  
09:30:42 11 be the Bill of Rights.

09:30:43 12 In the Bill of Rights, you find the Seventh  
09:30:46 13 Amendment to the Constitution, and it is the Seventh  
09:30:48 14 Amendment that embodies in our Constitution that same  
09:30:51 15 guarantee of a right to trial by jury in a civil case.

09:30:54 16 The Seventh Amendment, along with the other nine  
09:31:01 17 amendments in the Bill of Rights, were all ratified in  
09:31:04 18 1791. So for well over 200 years every American citizen,  
09:31:07 19 through our Bill of Rights and our Constitution, has had a  
09:31:11 20 guaranteed right to submit their disputes in civil matters  
09:31:14 21 to a jury of their peers.

09:31:17 22 So by being here this morning, ladies and  
09:31:19 23 gentlemen, and presenting yourselves for service in a  
09:31:24 24 jury -- or on a jury in a civil case, you are in a very  
09:31:28 25 real way doing your part as American citizens to preserve,

09:31:32 1 protect, and defend our Constitution, and particularly the  
09:31:38 2 guarantees it contains to the right -- or regarding the  
09:31:41 3 right to trial by jury.

09:31:42 4 I always tell prospective jurors, such as  
09:31:47 5 yourselves, who appear for jury duty that in my personal  
09:31:52 6 opinion, jury service is the second highest form of public  
09:31:55 7 service that any American can render. In my personal  
09:32:00 8 opinion, the highest form of public service are those young  
09:32:02 9 men and women who serve in our armed forces.

09:32:05 10 Now, I want you all to understand that by being  
09:32:09 11 here today, you are embarking on and rendering very  
09:32:14 12 important public service to your country. And that's no  
09:32:18 13 small thing.

09:32:18 14 Also, later in the process this morning, you're  
09:32:23 15 each -- you're going to be addressed by the lawyers in this  
09:32:26 16 case, and when they address you, they're going to ask  
09:32:28 17 various questions of the panel.

09:32:31 18 I want you to understand that they're not seeking  
09:32:34 19 to pry unduly into your personal affairs. They're not  
09:32:38 20 attempting to be nosy, ladies and gentlemen. They are  
09:32:40 21 asking questions calculated to help secure for us a jury  
09:32:46 22 that is fair and impartial to hear the evidence in this  
09:32:50 23 case and to return a verdict based on that evidence.

09:32:52 24 Now, I don't know if it will happen today, it  
09:32:56 25 rarely does, but I want you to understand that if at

09:32:59 1 anywhere in the process you're asked a specific question  
09:33:02 2 that you believe in your context and in your personal life  
09:33:07 3 is so personal and so private that you don't feel  
09:33:10 4 comfortable answering it in front of everyone else on the  
09:33:14 5 panel, then you have the option of simply saying in  
09:33:16 6 response to that question, I'd like to talk to Judge  
09:33:19 7 Gilstrap about that. And if that's your response, I'll  
09:33:22 8 provide an opportunity for you to answer that question  
09:33:25 9 outside of the presence of everyone else on the panel.

09:33:27 10         But, as I say, that rarely comes up. But if it  
09:33:31 11 should, then I want you to know you have that option.

09:33:35 12         The important thing, ladies and gentlemen, is for  
09:33:37 13 each of you to give full, complete, and truthful answers to  
09:33:41 14 the questions asked. As long as your answers are full,  
09:33:46 15 complete, and truthful, there are no wrong answers.

09:33:49 16         Now, the trial in this case will begin today after  
09:33:53 17 we select the jury, and we will continue the trial  
09:33:57 18 tomorrow, Thursday of this week, we'll continue the trial  
09:34:00 19 Friday morning. We will not be in trial Friday afternoon  
09:34:04 20 of this week because I have to preside at an investiture of  
09:34:09 21 a newly-appointed district judge in our district.

09:34:12 22         Then we'll pick back up on Monday of next week,  
09:34:16 23 and we will try the case through Thursday of next week  
09:34:21 24 because Friday I have to go to Beaumont and preside over  
09:34:25 25 the investiture of another new district judge appointed in

09:34:29 1 our district.

09:34:30 2 That means I expect the case will probably be over  
09:34:32 3 by the end of Thursday of next week with the schedule that  
09:34:36 4 I've given you. That's not a guarantee, but it is my best  
09:34:39 5 guess.

09:34:41 6 But what I need to know from each of you is, if  
09:34:43 7 over that period of time that I've just described,  
09:34:46 8 basically from now through Thursday of next week, if any of  
09:34:50 9 you have a surgical procedure scheduled for yourselves or  
09:34:54 10 there's a surgical procedure scheduled for someone who  
09:34:58 11 you're responsible to be a caregiver for who's dependent  
09:35:01 12 upon you, or if you have non-refundable international  
09:35:05 13 airline tickets you can't get your money back on; if  
09:35:08 14 there's some very important and significant reason why you  
09:35:10 15 couldn't serve if you were selected during that period of  
09:35:13 16 time, I need to know about that now.

09:35:15 17 If there are any of you that fall in that  
09:35:18 18 category, would you please raise your hands and let me make  
09:35:20 19 a note of it?

09:35:22 20 All right. No. 1. I don't see anybody else in  
09:35:28 21 the jury box. Anybody outside of the jury box? I don't  
09:35:31 22 see any other hands.

09:35:32 23 All right. Thank you.

09:35:33 24 At this time, I'm going to call for announcements  
09:35:38 25 in the case of United States Automobile Association versus

09:35:43 1 Wells Fargo Bank. This is Civil Case No. 2:18-CV-245.

09:35:50 2 And, counsel, as you give your announcements,

09:35:53 3 would you identify yourselves, the members of your trial

09:35:55 4 team, and any corporate representatives that you have with

09:35:57 5 you?

09:35:57 6 We'll begin with the Plaintiff. What says the

09:35:59 7 Plaintiff?

09:35:59 8 MR. BUNT: Thank you, Your Honor.

09:36:00 9 Good morning, ladies and gentlemen. My name is

09:36:04 10 Chris Bunt. It's my pleasure to be here today representing

09:36:08 11 United Services Automobile Association.

09:36:11 12 With me today is Mr. Jason Sheasby, Ms. Lisa

09:36:18 13 Glasser, Mr. Tony Rowles. We also have with us senior vice

09:36:22 14 president of USAA, Jason Kamiya.

09:36:27 15 And in the gallery we have some of our witnesses;

09:36:30 16 Mr. Tom Conte, Mr. Matt Calman, and Mr. Roy Weinstein. And

09:36:36 17 also assisting us today with our jury selection is Ms. Tara

09:36:36 18 Trask and Mr. Todd Parish.

09:36:42 19 And we're ready to proceed, Your Honor.

09:36:44 20 THE COURT: All right. What says the Defendant?

09:36:45 21 MR. HILL: Good morning, Your Honor. Thank you.

09:36:48 22 Good morning, ladies and gentlemen. My name is

09:36:52 23 Wesley Hill. And it's my pleasure in this case to

09:36:54 24 represent Wells Fargo Bank.

09:36:56 25 And Wells Fargo Bank is represented here, for

09:36:58 1 purposes of the trial, by their corporate representative,  
09:37:01 2 Ms. Margot Lockwood-Stein. She is the senior vice  
09:37:06 3 president of digital payments at Wells Fargo.

09:37:08 4 Thank you, Ms. Stein.

09:37:10 5 And then also on our trial team here that will be  
09:37:12 6 trying the case with us this week, other folks you'll get  
09:37:15 7 to see and meet, is Mr. Tom Melsheimer, Ms. Danielle  
09:37:18 8 Williams, Ms. Renee Skinner, and Mr. Brett Johnson.

09:37:23 9 And we also have witnesses who you'll meet through  
09:37:26 10 the course of the trial. I won't bother to introduce those  
09:37:28 11 folks to you now. I know you're seeing a lot of names and  
09:37:31 12 faces, but it's good to see you folks this morning, and we  
09:37:33 13 look forward to presenting our case.

09:37:35 14 Thank you, Your Honor.

09:37:36 15 THE COURT: Thank you, counsel.

09:37:37 16 As I've told you, ladies and gentlemen, this is a  
09:37:42 17 patent case arising under the patent laws of the United  
09:37:45 18 States.

09:37:45 19 What the Plaintiff is claiming is that in this  
09:37:48 20 case, their patent was infringed by the Defendant, and  
09:37:52 21 they're seeking money damages because of that alleged  
09:37:54 22 infringement.

09:37:55 23 The Defendants deny that they infringe the  
09:37:57 24 Plaintiff's patent.

09:37:59 25 Now, that's very short and simple and an informal

09:38:03 1 way of describing the case to you in layman's terms.

09:38:05 2 I know you've all seen the patent video prepared  
09:38:09 3 by the Federal Judicial Center, and having seen that, you  
09:38:12 4 know more already about patent cases than most people do  
09:38:16 5 when they appear for jury duty.

09:38:18 6 Now, as I say, the lawyers for both sides are  
09:38:20 7 about to question the members of the panel to gather  
09:38:23 8 information that they'll use to exercise their peremptory  
09:38:27 9 challenges and complete the process of selecting the jurors  
09:38:30 10 that will try this case.

09:38:33 11 Again, ladies and gentlemen, there aren't any  
09:38:34 12 wrong answers to the questions you're going to be asked, as  
09:38:37 13 long as your answers are full, complete, and truthful.

09:38:39 14 Again, the lawyers are not attempting to pry into  
09:38:44 15 your personal affairs. They're attempting to represent  
09:38:46 16 their clients' interest and help for -- help secure an  
09:38:50 17 impartial and fair jury to hear the evidence.

09:38:53 18 If for any reason a question is asked of the panel  
09:38:57 19 by a member of either trial team that I don't think is  
09:39:01 20 proper, I will certainly stop them, but I want you to  
09:39:04 21 understand, these are very experienced trial lawyers. They  
09:39:07 22 understand the Rules of Civil Procedure, they understand  
09:39:09 23 the local rules, and the standing orders of this Court, and  
09:39:12 24 I don't expect that to happen. But if it should, I won't  
09:39:15 25 hesitate to intervene.

09:39:18 1           One thing I do want to call your attention to,  
09:39:21 2 because some of the lawyers during their questioning may  
09:39:24 3 ask you about your ability to implement this, is the burden  
09:39:31 4 of proof.

09:39:32 5           In this case, the jury is going to be called upon  
09:39:35 6 to apply a single burden of proof to the evidence that's  
09:39:38 7 presented, and that burden of proof is known as the  
09:39:41 8 preponderance of the evidence. Let me say that again, the  
09:39:46 9 preponderance of the evidence.

09:39:46 10          So when responding to any lawyer's questions about  
09:39:52 11 the burden of proof, I need to instruct you that when a  
09:39:56 12 party has the burden of proof on any claim or defense by a  
09:39:59 13 preponderance of the evidence, that means that the jury  
09:40:04 14 must be persuaded by the credible or believable evidence  
09:40:07 15 that that claim or defense is more probably true than not  
09:40:11 16 true. Let me say that again. More probably true than not  
09:40:16 17 true.

09:40:17 18          This is sometimes described and talked about as  
09:40:21 19 being the greater weight and degree of credible testimony.

09:40:28 20          Let me give you an example that I hope will help.  
09:40:31 21 I think you can see in front of our court reporter a statue  
09:40:34 22 of the Lady of Justice. She's blindfolded. She holds the  
09:40:38 23 sword of justice unsheathed and lowered at her right side.  
09:40:43 24 She holds the Scales of Justice in her left hand raised  
09:40:45 25 above her. Those scales are exactly equal and exactly

09:40:48 1 balanced, and that's where these two parties should start  
09:40:52 2 at the beginning of this trial, exactly in the same  
09:40:55 3 position.

09:40:56 4 Over the course of the trial, evidence is going to  
09:40:58 5 be presented to the jury. And for one party, think about  
09:41:03 6 it this way. The evidence that one party will put on will  
09:41:07 7 be put on one side of those scales, and the evidence the  
09:41:10 8 other party will put on will be put on the other side of  
09:41:13 9 those scales. And when all the evidence has been  
09:41:15 10 presented, the jury is going to be asked to answer certain  
09:41:18 11 questions.

09:41:19 12 And in answering those questions, if the party who  
09:41:22 13 has the burden of proof has those scales with the evidence  
09:41:27 14 from each side placed on them, if those scales tip in favor  
09:41:32 15 of the party who has the burden of proof, then they've met  
09:41:36 16 the preponderance of the evidence standard, even if those  
09:41:39 17 scales tip ever so slightly. Again, the greater weight and  
09:41:45 18 degree of credible testimony, more probably true than not  
09:41:48 19 true.

09:41:48 20 Now, this burden of proof, the preponderance of  
09:41:55 21 the evidence, is not to be confused with any other burden  
09:42:01 22 of proof. I suspect you've all heard of a different burden  
09:42:04 23 of proof called beyond a reasonable doubt. That burden of  
09:42:06 24 proof is the burden of proof applied in a criminal case.  
09:42:09 25 It has no application in a civil case like this one.

09:42:11 1 You may also have heard of another burden of proof  
09:42:15 2 called clear and convincing evidence. This, too, has no  
09:42:20 3 application in this case.

09:42:22 4 The only burden of proof that you will apply to  
09:42:25 5 the evidence and the testimony presented during this trial  
09:42:28 6 is the burden of proof that I've described to you and is  
09:42:32 7 known as the preponderance of the evidence.

09:42:34 8 Now, I give you these instructions, ladies and  
09:42:37 9 gentlemen, as I say, in case any of the lawyers in their  
09:42:40 10 questioning ask you about your ability to fairly apply  
09:42:44 11 that -- that standard to the evidence that will be  
09:42:46 12 presented during the trial.

09:42:49 13 Now, before the lawyers address you, I'm going to  
09:42:53 14 ask each of you to take a moment and stand and answer for  
09:42:56 15 me the nine questions that you see on the screen and that  
09:42:59 16 you have in laminated form in your hands. And this is  
09:43:03 17 where I get to find out about you, what I told you about  
09:43:07 18 myself when I came out to begin today.

09:43:10 19 This is the way we're going to do it. We're going  
09:43:12 20 to do it one at a time. We'll start with Panel Member  
09:43:16 21 No. 1, and we'll go numerically through the entire panel.  
09:43:19 22 When it is your turn, if you will stand -- and also, ladies  
09:43:22 23 and gentlemen, we're going to use a handheld microphone  
09:43:26 24 that the Court Security Officer will bring to you. Please  
09:43:28 25 wait until you get that handheld microphone, and then

09:43:32 1 please use it when you give your answers.

09:43:34 2 This is a big courtroom. There are a lot of  
09:43:36 3 people here. It's important that everyone's answers are  
09:43:39 4 heard.

09:43:39 5 Also, after you've answered these questions, as  
09:43:43 6 the lawyers continue with their questioning, you may get  
09:43:46 7 individual questions posed to you by one or more of the  
09:43:49 8 lawyers for either party. If you get a specific question  
09:43:53 9 posed to you that you're going to answer, let's do it in  
09:43:56 10 exactly the same way.

09:43:57 11 Please stand before you give your answer, wait  
09:44:00 12 until the Court Security Officer brings you the handheld  
09:44:03 13 microphone, and then using that handheld microphone, answer  
09:44:06 14 the question that's asked. We'll do it that way in both  
09:44:10 15 instances.

09:44:11 16 So with that, we'll begin with Panel Member No. 1,  
09:44:15 17 Ms. Hutto. If you'll give us your answers to those nine  
09:44:18 18 questions that are before you.

09:44:20 19 JUROR HUTTO: My name is it Karen Hutto. I live  
09:44:30 20 in Longview. I have two sons. My place of employment is  
09:44:34 21 Dr. William Rotzler. I'm an officer manager.

09:44:38 22 THE COURT: Ma'am, can you hold that microphone a  
09:44:39 23 little closer?

09:44:40 24 JUROR HUTTO: I've worked there for --

09:44:42 25 THE COURT: Thank you.

09:44:43 1 JUROR HUTTO: -- probably 13, 14 years. I  
09:44:47 2 graduated high school.

09:44:47 3 My spouse's name is John. His place of employment  
09:44:50 4 was in our business for 20 years and Jennings Scrap &  
09:44:56 5 Salvage for 30 years before that. He is now retired.

09:45:03 6 And I've not been on a jury before.

09:45:04 7 THE COURT: Okay. If you'll hand the microphone  
09:45:07 8 to Panel Member No. 2.

09:45:08 9 Ms. Hammond, if you'll give us your answers,  
09:45:11 10 please?

09:45:11 11 JUROR HAMMOND: My name is Andrea Hammond. I live  
09:45:14 12 in Gilmer. I have two adult boys. Place of employment is  
09:45:18 13 Benefit Risk Management, and I process medical claims.  
09:45:22 14 Been there for five years. I have some college.

09:45:25 15 Spouse is David Hammond. Place of employment is a  
09:45:29 16 peace of officer for the State of California. Been  
09:45:31 17 there -- was there for 30 years.

09:45:33 18 And I've never served.

09:45:34 19 THE COURT: All right. Thank you.

09:45:35 20 Next is Panel Member No. 3, Mr. Coleman.

09:45:39 21 JUROR COLEMAN: My name is Johnny Coleman. I live  
09:45:41 22 in Ore City, Texas. I have three sons. One is in  
09:45:47 23 elementary school. I work for Ore City Independent School  
09:45:49 24 District. I'm an agriculture teacher. I've been there 26  
09:45:50 25 years. I graduated from SFA in Nacogdoches.

09:45:54 1 My wife's name is Sherry. She is the office  
09:45:58 2 manager for Ore City Machine Shop, and she's been there  
09:46:02 3 about 28 years.

09:46:03 4 I did serve on a grand jury in Upshur County 15 or  
09:46:08 5 20 years ago.

09:46:08 6 And I'm the minister at Ore City Church of Christ.  
09:46:12 7 I've been there 35 years.

09:46:13 8 THE COURT: That's your only jury service, the  
09:46:15 9 grand jury?

09:46:16 10 JUROR COLEMAN: Yes, sir.

09:46:16 11 THE COURT: Thank you.

09:46:17 12 All right. Next is No. 4, Mr. Parras.

09:46:20 13 JUROR PARRAS: My name is Santiago Parras. I live  
09:46:24 14 in Ore City. I have two daughters. I'm retired. I used  
09:46:29 15 to work for a pipeline company, Valero, and I worked for  
09:46:38 16 about 30 years there. High school.

09:46:42 17 My -- Nanette is my spouse's name. She works at  
09:46:48 18 the ER at Good Shepherd. She's been there for 11 years.

09:46:53 19 And I never served.

09:46:56 20 THE COURT: What kind of work for Valero did you  
09:46:59 21 do, sir?

09:47:01 22 JUROR PARRAS: Gas measurement -- gas measurement.

09:47:04 23 THE COURT: Thank you.

09:47:04 24 All right. Next is Panel Member No. 5, Mr. Laird.

09:47:07 25 JUROR LAIRD: My name is Kyle Laird. I live in

09:47:09 1 Hallsville. I've got three little boys. I work for S & B  
09:47:16 2 Engineering. I've been there for -- I guess since July.  
09:47:19 3 So prior to that, I was with Flint Hills Resources for  
09:47:22 4 about seven years. I have a Bachelor of Science in  
09:47:25 5 electrical engineering technology from Texas A&M.

09:47:28 6 My spouses's name is Kay Lynn. She's a  
09:47:29 7 stay-at-home mom. She's been a stay-at-home mom for about  
09:47:33 8 12 years.

09:47:33 9 And I have never served on a jury.

09:47:35 10 THE COURT: All right, sir. Thank you.

09:47:38 11 No. 6, Ms. Martin.

09:47:39 12 JUROR MARTIN: My name is Dawn Martin. I live out  
09:47:42 13 in Diana, Texas. I have no children. I am the executive  
09:47:47 14 director for Windridge Therapy Equestrian Center, a  
09:47:52 15 non-profit organization. I have technical training for my  
09:47:54 16 job in that realm. I have been at Windridge for 30 years.

09:47:58 17 My spouse's name is David Martin. He is a  
09:48:01 18 postmaster for the United States Postal Service. He has  
09:48:04 19 been there about 21 years.

09:48:07 20 And I served on a civil case in Upshur County.

09:48:13 21 THE COURT: How long ago was that?

09:48:15 22 JUROR MARTIN: 10 years ago.

09:48:17 23 THE COURT: And what about your educational  
09:48:18 24 background?

09:48:18 25 JUROR MARTIN: Just high school, technical

09:48:22 1 training for my job.

09:48:22 2 THE COURT: Thank you, ma'am.

09:48:23 3 Next is No. 7, Mr. Cothren.

09:48:28 4 JUROR COTHREN: Good morning, Judge. My name is

09:48:29 5 Paul Cothren. I'm from Atlanta, Texas. I have one son.

09:48:35 6 And I am currently the Cass County Commissioner for

09:48:39 7 Precinct 33. I'm in my 19th year of service. My

09:48:45 8 educational background is high school.

09:48:46 9 My spouse's name is Loretta. She works in the

09:48:50 10 Bloomburg ISD school system. She works in the computer

09:48:55 11 lab, and she's been there for 12, 15 years in the school

09:48:59 12 system; probably eight years at Bloomburg. Started in

09:49:04 13 Queen City, Texas.

09:49:09 14 My prior jury service, I was seated, but we did  
09:49:12 15 not -- they deliberated out of court, however that happens,  
09:49:15 16 between the lawyers. Once they seated the jury, then it --  
09:49:18 17 they came in and dismissed us.

09:49:20 18 THE COURT: All right, sir. Thank you very much.

09:49:23 19 We'll next go to Panel Member No. 8.

09:49:29 20 JUROR HRELJA: I'm Angie Hrelja from Lone Star,  
09:49:35 21 Texas. I have three girls. I work at Gilmer ISD as an  
09:49:39 22 inclusion teacher. Been there for 11 years.

09:49:43 23 My spouse is John Hrelja. He works at Intellect.  
09:49:48 24 He's been there for nine years.

09:49:50 25 And I've never served on a jury.

09:49:52 1 THE COURT: All right. Thank you.

09:49:53 2 Next is No. 9, Ms. Carpenter.

09:49:55 3 JUROR CARPENTER: My name is Vanessa, and I live

09:50:00 4 in Gilmer.

09:50:00 5 THE COURT: Ms. Carpenter, hold that microphone

09:50:02 6 closer, please.

09:50:03 7 JUROR CARPENTER: I have three grown children.

09:50:08 8 I'm a stay-at-home -- I baby-sit my granddaughter.

09:50:12 9 THE COURT: Okay.

09:50:12 10 JUROR CARPENTER: And I've been doing that for the

09:50:15 11 year that she's been here. I've been to high school and

09:50:18 12 some college.

09:50:19 13 My spouse's name is Floyd. And he works for Holt

09:50:26 14 Caterpillar. He's been there about 41 years.

09:50:30 15 And I served on a civil case here.

09:50:34 16 THE COURT: In this Court?

09:50:35 17 JUROR CARPENTER: Yes.

09:50:35 18 THE COURT: How long ago was that?

09:50:35 19 JUROR CARPENTER: My daughter graduated in 2010,

09:50:37 20 so it was before that.

09:50:38 21 THE COURT: Over 10 years ago?

09:50:39 22 JUROR CARPENTER: Yeah.

09:50:40 23 THE COURT: Thank you, ma'am.

09:50:40 24 No. 10 is next, Mr. Howard.

09:50:45 25 JUROR HOWARD: My name is Paul Howard. We have --

09:50:49 1 between me and my wife, we have three grown sons. And the  
09:50:54 2 place of employment was at Red River Army Depot, which I  
09:50:58 3 retired. And the type of work I did --

09:51:01 4 THE COURT: Hold the microphone a little closer,  
09:51:03 5 Mr. Howard.

09:51:03 6 JUROR HOWARD: Okay. I'm sorry. The type of work  
09:51:07 7 I did was missile certification. I worked there for 16  
09:51:13 8 years on missiles, but my prior education was high school  
09:51:17 9 and my training in electronics was through the Army.

09:51:26 10 My -- my wife's name is Ana. She works at Waskom  
09:51:32 11 school district as a special education aide. And I'm not  
09:51:41 12 really sure how long she worked there. She was working  
09:51:43 13 there when we got married.

09:51:46 14 Prior service -- prior service -- jury service, I  
09:51:50 15 had a civil -- no, I had both civil and criminal. In the  
09:51:56 16 civil case, I told the Judge I already made up my mind what  
09:52:01 17 was going on --

09:52:02 18 THE COURT: Where -- where was that civil case  
09:52:03 19 tried?

09:52:04 20 JUROR HOWARD: In Texarkana.

09:52:05 21 THE COURT: All right. And how long ago was that  
09:52:07 22 civil case? Best guess.

09:52:11 23 JUROR HOWARD: At least five years.

09:52:13 24 THE COURT: Okay.

09:52:13 25 JUROR HOWARD: And criminal case, I had there in

09:52:17 1 New Boston where they was judging a clerk of a judge  
09:52:24 2 stealing money.

09:52:24 3 THE COURT: All right, sir.

09:52:25 4 JUROR HOWARD: After two days, she changed her  
09:52:29 5 mind and pled guilty, so they dismissed us.

09:52:32 6 THE COURT: All right. Thank you very much.

09:52:34 7 Next is Panel Member No. 11, Ms. Smith.

09:52:38 8 JUROR SMITH: My name is Terisa Smith. I live  
09:52:41 9 outside of Gladewater, which is a Gilmer address. I don't  
09:52:41 10 have any children, just two Basset Hounds. Those are my  
09:52:45 11 children. I retired from Kroger -- 32 years there. I only  
09:52:48 12 have high school education.

09:52:50 13 My spouse's name is Darrell Smith. He retired  
09:52:54 14 also from ENS; 25 years he was there.

09:52:57 15 And I have not served on a jury.

09:52:58 16 THE COURT: What kind of work did you do for  
09:53:01 17 Kroger?

09:53:01 18 JUROR SMITH: Store manager.

09:53:02 19 THE COURT: Thank you, ma'am.

09:53:03 20 Next is Panel Member No. 12, Ms. Faulkner.

09:53:06 21 JUROR FAULKNER: Beverly Faulkner. I have no  
09:53:08 22 children. I retired from banking of 30 years and some real  
09:53:14 23 estate. I worked, as I said, in banking 30 years. My  
09:53:19 24 education, high school graduate with some college.

09:53:22 25 My husband's name is Irving Heard. He's a retired

09:53:27 1 realtor. He was in real estate for 30 years.

09:53:29 2 And I've had no prior jury service.

09:53:32 3 THE COURT: Thank you. Next is Panel Member No.

09:53:34 4 13, Ms. Blackmon.

09:53:36 5 JUROR BLACKMON: My name is Karen Blackmon. I  
09:53:41 6 live in Gladewater. I have six children. I own a day care  
09:53:46 7 center in Gladewater and is a licensed center. And I also  
09:53:50 8 have a part-time job working for -- as a retail  
09:53:50 9 merchandiser for Hallmark Cards. I've had my day care  
09:53:54 10 center for 24 years. I've worked for Hallmark for a month.  
09:53:58 11 My educational background is high school and an associate's  
09:54:01 12 in early childhood.

09:54:02 13 My spouse's name is Ricky Blackmon. He is working  
09:54:06 14 for Texas Eastman, Eastman Chemical Company. He is an  
09:54:12 15 operations supervisor for research and development. He's  
09:54:15 16 been there 26 years.

09:54:18 17 I have prior jury service in a civil case in Gregg  
09:54:22 18 County in the mid- to late '80s.

09:54:24 19 THE COURT: All right. Thank you very much.

09:54:25 20 Ms. McCain is next, No. 14.

09:54:29 21 JUROR MCCAIN: My name is Debbie McCain. I live  
09:54:31 22 in Jefferson, Texas. No children. Place of employment  
09:54:35 23 Longview Cancer Center 31 years. Associate's degree.

09:54:39 24 No spouse. I'm a widow.

09:54:40 25 And I've served on civil and criminal case.

09:54:43 1 THE COURT: You have served on criminal and civil  
09:54:45 2 cases?

09:54:46 3 JUROR MCCAIN: Yes.

09:54:47 4 THE COURT: How long ago and where were those?

09:54:48 5 JUROR MCCAIN: Marion County, probably the last  
09:54:51 6 was civil, maybe three years. I believe the criminal case  
09:54:57 7 was here, probably about 20 years ago.

09:55:00 8 THE COURT: Thank you very much, ma'am.

09:55:01 9 All right. I'll ask the Court Security Officer to  
09:55:05 10 take the handheld mic around to Panel Member No. 15, and  
09:55:09 11 we'll next here from Mr. Holladay.

09:55:12 12 JUROR HOLLADAY: I'm Lee Holladay. I have two  
09:55:15 13 children in high school. I live in Hallsburg, Texas. I  
09:55:21 14 work for Christus Good Shepherd Medical Center. I'm a  
09:55:25 15 certified registered nurse anesthetist there. I've given  
09:55:29 16 anesthesia there for 20 years. I've been -- practice  
09:55:32 17 nurse.

09:55:32 18 My wife, Sherry, is a school teacher. She's  
09:55:36 19 worked there for 12 years in Hallsburg.

09:55:40 20 Never served on a jury.

09:55:42 21 THE COURT: All right, sir. Thank you very much.

09:55:44 22 Next is Panel Member No. 16, Ms. Perkins.

09:55:48 23 JUROR PERKINS: My name is Salien Perkins. I live  
09:55:53 24 in Hallsburg. I have three children. I work at Bed Bath  
09:55:56 25 & Beyond. I'm assistant manager there. I've been there

09:55:59 1 for seven years. I have a high school education.

09:56:02 2 I'm not married.

09:56:04 3 And I've had no civil or criminal cases.

09:56:07 4 THE COURT: And the store for Bed Bath & Beyond

09:56:09 5 that you work at is located where, ma'am?

09:56:12 6 JUROR PERKINS: Longview, Texas.

09:56:14 7 THE COURT: Thank you.

09:56:15 8 No. 17 is next, Mr. Byrd.

09:56:17 9 JUROR BYRD: My name is Michael Byrd. I'm married

09:56:19 10 to Christi Byrd. We have three children. I work at U.S.

09:56:23 11 Steel. I'm a manager of the machine shop and weld shop.

09:56:28 12 I've worked there since 2006. I graduated from high school

09:56:33 13 from Daingerfield and have a certificate in mechanical -- I

09:56:39 14 mean, computer-aided manufacturing from TSTC here in

09:56:42 15 Marshall.

09:56:43 16 My wife works at Bobbin Insurance. She's an

09:56:49 17 account manager for the commercial side, and she's worked

09:56:53 18 there for about five years.

09:56:55 19 And I've never served on a jury.

09:56:56 20 THE COURT: Thank you, sir. Next is No. 18,

09:56:59 21 Mr. Tigert.

09:57:00 22 JUROR TIGERT: My name is Richard Tigert. I live

09:57:02 23 in Daingerfield, Texas. I've got one child, one

09:57:06 24 12-year-old girl. I work for the Daingerfield-Lone Star

09:57:09 25 ISD maintenance. I work on anywhere from plumbing,

09:57:13 1 electrical, HVAC. I've worked there six years. High  
09:57:18 2 school education.

09:57:18 3 My spouse's name is Staci Tigert. She's a  
09:57:24 4 physical therapist assistant. And she's done that for the  
09:57:28 5 past 15, 20 years.

09:57:31 6 Prior jury was a criminal case here about 10 years  
09:57:33 7 ago.

09:57:34 8 THE COURT: All right, sir. Thank you very much.

09:57:38 9 Next take the microphone around to Panel Member  
09:57:41 10 No. 19, Mr. Harris.

09:57:43 11 JUROR HARRIS: My name is Carl Harris. I'm from  
09:57:47 12 Elysian Fields, Texas. I have one daughter. I work for  
09:57:51 13 Enterprise Products, and that's a pipeline company. I'm in  
09:57:53 14 gas measurement. I've been there 20 years. I have a  
09:57:55 15 Bachelor of Science in computer science.

09:57:58 16 My wife's name is Terry, and she is a librarian at  
09:58:01 17 the middle school at Elysian Fields School District. And  
09:58:05 18 she's worked there 15 years.

09:58:08 19 And I've been on a civil here in Marshall probably  
09:58:11 20 five years ago.

09:58:12 21 THE COURT: Was that in state court or here?

09:58:16 22 JUROR HARRIS: It was County Court at Law.

09:58:17 23 THE COURT: County Court at Law. Thank you, sir.

09:58:20 24 Next is No. 20, Mr. Blaylock.

09:58:23 25 JUROR BLAYLOCK: Good morning, Judge.

09:58:25 1 THE COURT: Good morning.

09:58:26 2 JUROR BLAYLOCK: My name is Louis Blaylock. I

09:58:31 3 live in Atlanta, Texas. I have three grown daughters, and

09:58:34 4 my place of employment was Red River Army Depot. I was an

09:58:39 5 integrated electronic technician, and I was there for 43

09:58:46 6 years. And I have a high school education and the

09:58:51 7 military.

09:58:52 8 And I'm divorced.

09:58:54 9 And I have served on -- I have served on a civil

09:59:01 10 case, and it was in Linden, Texas about maybe seven years

09:59:04 11 ago.

09:59:04 12 THE COURT: Thank you, sir.

09:59:05 13 If you'll pass the microphone to our next panel

09:59:09 14 member, please, Ms. Barnard.

09:59:12 15 JUROR BARNARD: My name is Denise Barnard. I live

09:59:16 16 in Gilmer, Texas. I have two grown children. I'm a store

09:59:20 17 manager of Tuesday Morning in Longview. Worked there for

09:59:25 18 about 10 years. I have some college.

09:59:27 19 My spouse's name is Jimmy. He is presently

09:59:30 20 unemployed.

09:59:32 21 And I've never served on a jury.

09:59:37 22 THE COURT: What is Tuesday Morning in Longview?

09:59:40 23 What kind of store is that?

09:59:40 24 JUROR BARNARD: It's a close-out store, kind of

09:59:42 25 like TJ Maxx.

09:59:43 1 THE COURT: Okay. Thank you, ma'am.

09:59:45 2 Next is Panel Member No. 22, Mr. Davis.

09:59:51 3 JUROR DAVIS: Good morning, my name is Keith

09:59:55 4 Davis. I live in Douglasville, Texas. I have three

10:00:00 5 children. I'm a self-employed owner-operator in the

10:00:02 6 logging industry. I've done that for nine and a half years

10:00:06 7 now. Unfortunately, I'm a high school drop-out.

10:00:10 8 My wife's name is Susan. She is currently

10:00:18 9 retired, taking care of our only child we have living at

10:00:22 10 home.

10:00:28 11 And I have no prior jury service.

10:00:29 12 THE COURT: All right, sir. Thank you, Mr. Davis.

10:00:31 13 Next is 23, Mr. Henson.

10:00:34 14 JUROR HENSON: Good morning. My name is Michael

10:00:36 15 Henson. I live in Jefferson, Texas. I have three grown

10:00:40 16 children. I work for Smithfield Direct LLC. I've been

10:00:46 17 there 28 and a half years. I have a high school diploma.

10:00:51 18 I have a diesel mechanics class I took at Kilgore College.

10:00:57 19 My wife's name is Sarah. She used to work for

10:01:00 20 Jordan Healthcare before she retired. She was there for,

10:01:04 21 oh, 8 or 10 years.

10:01:05 22 And I served on civil and criminal cases in Marion

10:01:09 23 County.

10:01:09 24 THE COURT: How long ago, sir?

10:01:11 25 JUROR HENSON: It's been five, six years.

10:01:12 1 THE COURT: Thank you very much.

10:01:14 2 And we'll next pass the microphone to Panel Member

10:01:18 3 No. 24, Ms. Kelley.

10:01:20 4 JUROR KELLEY: My name is Toni Kelley. I have

10:01:24 5 three children who are grown. My place -- I'm a retired

10:01:30 6 nurse. I worked as a nurse for all my life practically. I

10:01:41 7 went to --

10:01:42 8 THE COURT: Did you work in a hospital, did you

10:01:44 9 work at a clinic, did you work at a doctor's office --

10:01:48 10 JUROR KELLEY: All those places.

10:01:49 11 THE COURT: Okay.

10:01:49 12 JUROR KELLEY: All those places.

10:01:49 13 THE COURT: Okay.

10:01:49 14 JUROR KELLEY: I served in hospitals, schools.

10:01:52 15 The last place I worked was for a medical massage

10:01:57 16 therapist, and I was just an assistant.

10:01:58 17 THE COURT: Okay. Thank you.

10:02:00 18 JUROR KELLEY: I went to a vocational school.

10:02:04 19 My spouse's name is Phillip Kelley. He work --

10:02:09 20 he's retired from AEP, American Electric Power. And he

10:02:15 21 worked there for 30 years.

10:02:18 22 And I worked -- I was on a civil case in Morris

10:02:24 23 County.

10:02:24 24 THE COURT: How long ago, ma'am?

10:02:26 25 JUROR KELLEY: Probably 20 years.

10:02:28 1 THE COURT: Okay. Thank you very much.

10:02:28 2 Next is No. 25, Mr. Traylor.

10:02:32 3 JUROR TRAYLOR: My name is Todd Traylor. I have

10:02:37 4 three grown boys. I'm a fourth generation farmer, which

10:02:41 5 I've had -- that's what I've always done. I've got a high

10:02:44 6 school diploma.

10:02:44 7 My wife's name is Tara. She worked at

10:02:49 8 St. Michael's until three years ago. She was involved in

10:02:51 9 an accident. She's at home now. Let's see, she had worked

10:02:55 10 there like 17, 18 years.

10:02:56 11 And I've had no prior jury service.

10:02:58 12 THE COURT: All right, sir. Thank you very much.

10:02:59 13 Next is Ms. Haines, No. 26.

10:03:01 14 JUROR HAINES: Excuse me, I'm a little froggy, so

10:03:05 15 excuse my voice. My name is Kimberly Haines. I live in

10:03:10 16 Longview, Texas. I have a six and eight-year-old, as well

10:03:14 17 as 25 and 26-year-old stepsons.

10:03:16 18 Place of employment I'm a small business owner.

10:03:19 19 I'm an artist. I run two different art businesses,

10:03:22 20 paintings, drawings, as well as I do digital designs,

10:03:26 21 marketing materials for other small businesses.

10:03:29 22 Prior to that, I worked in staffing doing contract

10:03:32 23 work for Caterpillar where I worked in Illinois. And then

10:03:36 24 before that I worked in banking for 10 years.

10:03:39 25 My educational background, I have my master's in

10:03:43 1 business administration. My specific areas of study was  
10:03:47 2 risk management and financial institution management.

10:03:50 3 My spouse's name is Scott Haines. He is senior  
10:03:54 4 vice president at East Texas Professional Credit Union in  
10:03:57 5 Longview. He has been there for seven years. That's why  
10:04:01 6 we moved from Texas to Illinois. Prior to that he worked  
10:04:05 7 for a credit union in Illinois for 22 years.

10:04:09 8 And this is my first time serving on a jury.

10:04:11 9 THE COURT: Thank you very much, ma'am.

10:04:13 10 Next is No. 27, Mr. Marks.

10:04:17 11 JUROR MARKS: My name is Carl Marks. I live in  
10:04:19 12 Waskom, Texas. I have seven children. I work at General  
10:04:27 13 Cable as a line operator. I worked there for 33 years. I  
10:04:34 14 graduated Marshall High School and attended Panola College.

10:04:37 15 My spouse's name is Ruby. She works for Texas  
10:04:41 16 Department of Criminal Justice, region supervisor. She had  
10:04:47 17 worked there for 14 years.

10:04:48 18 And I served on three criminal case -- cases.

10:04:52 19 THE COURT: And where were those, sir?

10:04:54 20 JUROR MARKS: Harrison County.

10:04:55 21 THE COURT: How long ago?

10:04:57 22 JUROR MARKS: Last one was about 10 years ago.

10:04:59 23 THE COURT: All right. Thank you, Mr. Marks.

10:05:00 24 Next is No. 28, Mr. Callison.

10:05:03 25 JUROR CALLISON: My name is Stuart Callison. I

10:05:07 1 live in Bloomburg, Texas. I have three children. I work  
10:05:10 2 for the Texas Department of Transportation Atlanta District  
10:05:14 3 as an environmental specialist. I oversee environmental  
10:05:18 4 studies for highway and bridge projects. I worked there  
10:05:22 5 for 25 years. I have a bachelor's degree in environmental  
10:05:23 6 geology from Stephen F Austin.

10:05:25 7 My spouse's -- my wife's name is Renee. She's a  
10:05:29 8 teacher at Texarkana ISD. She has about three years there.  
10:05:32 9 Prior to that she worked 22 years at Queen City ISD.

10:05:36 10 And I have not served on a -- on a jury.

10:05:38 11 THE COURT: All right, sir. Thank you very much.

10:05:39 12 If you'll pass that microphone back to our Court  
10:05:44 13 Security Officer.

10:05:44 14 Thank you, ladies and gentlemen.

10:05:46 15 Now, I need to say a couple additional things to  
10:05:50 16 you before I turn the questioning over to the lawyers in  
10:05:54 17 the case.

10:05:54 18 The jurors that are actually selected to serve in  
10:05:58 19 this case will serve in the role as the judges of the  
10:06:02 20 facts. And the jury selected will make the sole  
10:06:05 21 determination about what the facts are in this case.

10:06:10 22 Now, my job, as the Judge, is to rule on questions  
10:06:13 23 of law, evidence, and procedure, to maintain the decorum of  
10:06:17 24 the courtroom, and to oversee the efficient flow of the  
10:06:20 25 evidence during the trial.

10:06:21 1           Also, I want to say a couple additional things to  
10:06:26 2 you about our judicial system that I hope will put things  
10:06:29 3 in a proper perspective for you.

10:06:31 4           In any jury trial, besides the parties themselves,  
10:06:37 5 there are always three participants; the jury, the judge,  
10:06:42 6 and the lawyers.

10:06:43 7           With regard to the lawyers, I think it's important  
10:06:50 8 for each of you to understand that our judicial system is  
10:06:52 9 an adversary system, which simply means that during the  
10:06:55 10 course of the trial, each of the parties through their  
10:06:57 11 counsel will seek to present their respective cases to the  
10:07:02 12 jury in the best -- the very best light possible.

10:07:06 13           Now, it's no surprise -- should be no surprise to  
10:07:10 14 any of you that lawyers are sometimes criticized in the  
10:07:12 15 media and in the public, but the Court's observed that a  
10:07:16 16 fair amount of this criticism results from a basic  
10:07:19 17 misunderstanding about our adversary system in which the  
10:07:24 18 lawyers act as advocates for the competing parties.

10:07:28 19           As an advocate, a lawyer is ethically and legally  
10:07:32 20 obligated to zealously assert his or her client's position  
10:07:37 21 under the rules of our adversary system. And by presenting  
10:07:41 22 the best case possible on behalf of their clients, the  
10:07:45 23 lawyers hopefully will enable the jury to better weigh the  
10:07:48 24 relevant evidence, to determine the truth, and arrive at a  
10:07:53 25 just verdict based on that evidence.

10:07:55 1           This adversary system of justice has served our  
10:07:59 2 nation well and has been in place since the very beginning,  
10:08:03 3 over 200 years, and America's lawyers have been, are now,  
10:08:07 4 and will continue to be an indispensable part of our  
10:08:11 5 judicial system.

10:08:11 6           So as we go forward, throughout this trial, even  
10:08:15 7 though there might be times when I would frown or growl at  
10:08:20 8 the lawyers, it's simply because I am trying to make sure  
10:08:24 9 that their advocacy doesn't get outside the boundaries of  
10:08:30 10 our adversary system and our Rules of Procedure.

10:08:31 11           So keep in mind, ladies and gentlemen, they are  
10:08:35 12 just doing their jobs, and I think it's important for you  
10:08:37 13 to be aware of that as we go forward.

10:08:41 14           Also, ladies and gentlemen, throughout the course  
10:08:43 15 of the trial, I'm going to do my very best to make sure  
10:08:47 16 that the members of the jury have no idea about what I  
10:08:49 17 think about the evidence that's presented during the trial,  
10:08:53 18 because evaluating the evidence and determining the facts  
10:08:57 19 in this case from that evidence is the job of the jury. It  
10:09:00 20 is not my job during this trial.

10:09:02 21           So those of you that are selected to serve on this  
10:09:06 22 jury should not take any expressions or comments that you  
10:09:11 23 see or hear or think you see or hear as coming from me as  
10:09:18 24 something to consider in deciding what the ultimate facts  
10:09:21 25 are in this case.

10:09:21 1 With that, I will now allow the lawyers to address  
10:09:24 2 the panel for their respective clients.

10:09:26 3 We'll begin with the Plaintiff.

10:09:28 4 Mr. Bunt, you may address the panel on behalf of  
10:09:31 5 the Plaintiff.

10:09:31 6 MR. BUNT: Thank you, Your Honor.

10:09:32 7 THE COURT: Would you like a warning on your time?

10:09:34 8 MR. BUNT: Yes, Your Honor. Could I have notice  
10:09:36 9 when I have five minutes remaining?

10:09:37 10 THE COURT: Yes, you can. You may proceed.

10:09:39 11 MR. BUNT: Thank you, Your Honor.

10:09:40 12 Good morning again, ladies and gentlemen. As I  
10:09:42 13 mentioned earlier, my name is Chris Bunt. It's my honor to  
10:09:46 14 be here today representing United Services Automobile  
10:09:51 15 Association, who I'm just going to refer to as USAA from  
10:09:54 16 here on out.

10:09:55 17 I know a little bit about each of you from the  
10:09:57 18 information you've provided and from the questionnaires,  
10:10:00 19 and I really appreciate that. Let me tell you the same  
10:10:03 20 about me.

10:10:03 21 I grew up in Hallsville. I've been practicing law  
10:10:06 22 in Tyler for the last 26 years. I'm married. My wife's  
10:10:12 23 name is Celia. She's the office manager at our firm. We  
10:10:15 24 have two kids, a daughter 17 and a son 13. And I've been  
10:10:20 25 sitting where y'all have on many occasions, but I've not

10:10:23 1 actually been selected for a jury yet.

10:10:25 2 So His Honor is going to give us an opportunity to  
10:10:29 3 discuss the case in more detail a little later on today,  
10:10:32 4 but I want to give you just a high-level overview of what  
10:10:35 5 this case is about.

10:10:36 6 So this case concerns two U.S. patents that are  
10:10:41 7 owned by my client, USAA. And these patents relate to  
10:10:46 8 depositing checks using your smartphone or a mobile device  
10:10:50 9 instead of going to the bank using a teller or an ATM.

10:10:55 10 And, specifically, the invention uses the  
10:10:58 11 processor within the mobile device -- within the phone  
10:11:02 12 itself, to automatically capture the check image at the  
10:11:10 13 right quality to meet all the requirements for deposit.

10:11:12 14 Now, we allege that Wells Fargo is using our  
10:11:14 15 patented technology in their own product. And in patent  
10:11:18 16 cases, this sort of trespassing is called infringement.  
10:11:22 17 Wells Fargo denies that they are trespassing on our  
10:11:25 18 property.

10:11:25 19 We contend that Wells Fargo has made profits and  
10:11:32 20 saved costs and had other benefits as a result of using our  
10:11:36 21 technology.

10:11:37 22 They deny that. They deny that they're  
10:11:39 23 trespassing on our property, but they say that if they are,  
10:11:44 24 we owe -- they owe no more than 10 -- than \$12 million. We  
10:11:50 25 contend that they owe \$300 million to USAA.

10:11:54 1 Now, this part of the trial gives the lawyers a  
10:11:56 2 chance to discuss with the jury any life experiences you  
10:12:00 3 may have that might start you out leaning one direction or  
10:12:03 4 the other. And there's nothing wrong with having life  
10:12:08 5 experiences that start you leaning. We all lean one  
10:12:10 6 direction or another on issues, but we just want to know  
10:12:13 7 about those and see if that would affect your ability to be  
10:12:16 8 able to sit on this jury.

10:12:17 9 So you heard this morning about -- from the patent  
10:12:21 10 jury video about patents and how those are pieces of  
10:12:25 11 property. And you understand that when the Patent Office  
10:12:28 12 issues a patent, it's like a deed that's being given to the  
10:12:31 13 patent owner.

10:12:32 14 So I want to start with y'all. How many in the  
10:12:35 15 jury box -- how many land owners do we have, folks who own  
10:12:40 16 a piece of property? That's everybody.

10:12:42 17 Let me just start with Ms. Hutto, if you don't  
10:12:45 18 mind, Juror No. 1.

10:12:48 19 I'm sorry.

10:12:49 20 Thank you, Ms. Hutto. Let me ask you this: If an  
10:12:52 21 oil company -- oil and gas company were to come out and  
10:12:56 22 drill a well on your property without your permission,  
10:12:58 23 would you have any hesitation about going to court to  
10:13:02 24 enforce your property rights and to get them off of your  
10:13:04 25 property?

10:13:05 1 JUROR HUTTO: No.

10:13:06 2 MR. BUNT: Okay. Let me ask Mrs. Hammond, who's

10:13:09 3 sitting right next to you, the same question.

10:13:13 4 JUROR HAMMOND: The answer would be no.

10:13:15 5 MR. BUNT: Okay. You'd have no qualms?

10:13:16 6 JUROR HAMMOND: No.

10:13:17 7 MR. BUNT: Is there anybody in the jury box who'd

10:13:19 8 have any issue about going to court -- who feels a little

10:13:23 9 hesitant about going to court to enforce their property

10:13:27 10 rights? Can I see a show of hands if anybody feels that

10:13:29 11 way?

10:13:30 12 How about over here in the gallery? Is there

10:13:31 13 anybody who feels like they'd have hesitations about going

10:13:33 14 to court to enforce their property rights?

10:13:35 15 Let me change up the question a little bit. Is

10:13:37 16 there anybody who feels like intellectual property should

10:13:42 17 be treated dif -- like patents, should be treated

10:13:45 18 differently than, say, land-type property? Anybody feel

10:13:49 19 like that in the jury box?

10:13:50 20 Let me just pick on Mr. Coleman, No. 3. How do

10:14:00 21 you feel about that?

10:14:01 22 JUROR COLEMAN: I feel like it would be the same.

10:14:03 23 MR. BUNT: Okay. Thank you, sir.

10:14:04 24 And, Mr. Parras, how do you feel about that?

10:14:07 25 JUROR PARRAS: I feel the same.

10:14:08 1 MR. BUNT: Okay. Thank you, sir.

10:14:09 2 Does anybody feel differently about that?

10:14:12 3 You're going to hear from a financial expert that

10:14:16 4 we're going to bring to you who's going to explain the

10:14:19 5 profits and cost savings and other benefits that Wells

10:14:23 6 Fargo has made using our property. And as I've told you

10:14:26 7 before, we're going to be asking the jury to award \$300

10:14:31 8 million.

10:14:32 9 So my question is, is there anybody on the panel

10:14:36 10 who feels like, you know what, no matter what the evidence

10:14:40 11 is, no matter whether you can prove infringement, there's

10:14:44 12 just no way you could ever see yourself writing down a

10:14:46 13 figure of \$300 million? Is there anybody who feels that

10:14:49 14 way in the jury box?

10:14:53 15 Let me just pick on somebody. Mr. Laird, No. 5 --

10:14:57 16 Juror No. 5. Do you feel like if there's evidence to

10:15:00 17 support a verdict of \$300 million, you could award that?

10:15:04 18 JUROR LAIRD: Yes, sir.

10:15:04 19 MR. BUNT: Okay. Ms. Martin, how about you? You

10:15:08 20 feel the same way?

10:15:10 21 JUROR MARTIN: Yes, sir.

10:15:11 22 MR. BUNT: Is there anybody over on this side who

10:15:13 23 does not agree with that, who thinks in the back of their

10:15:15 24 head, you know what, you may have a great case, you may

10:15:18 25 prove up your damages, but there's just no way I could

10:15:21 1 award that much money? Anybody feel that way?

10:15:23 2 Yes, ma'am, Ms. Perkins? That's Juror No. 16. Do  
10:15:30 3 you have some qualms about that number?

10:15:32 4 JUROR PERKINS: Yes, sir.

10:15:33 5 MR. BUNT: Okay. You'd feel like you have  
10:15:35 6 difficulty awarding that number even if there was evidence  
10:15:37 7 to support it?

10:15:38 8 JUROR PERKINS: Yes, sir.

10:15:39 9 MR. BUNT: Thank you, ma'am. I appreciate your  
10:15:41 10 candor about that.

10:15:41 11 Does anybody else feel that way, like Ms. Perkins?  
10:15:45 12 Oh, we're getting some numbers up now. Okay.

10:15:48 13 So let's go to Ms. Hrelja, Juror No. 8. Yes,  
10:15:51 14 ma'am, how do you feel about that?

10:15:53 15 JUROR HRELJA: I just feel like that's an awful  
10:15:55 16 lot of money to be awarded.

10:15:57 17 MR. BUNT: And would you feel like you would have  
10:15:59 18 difficulty awarding that much money even if there is  
10:16:02 19 evidence to support it?

10:16:05 20 JUROR HRELJA: Yes, sir, because I'm probably a  
10:16:08 21 different kind of breed. I just -- I think we should all  
10:16:11 22 share. So, you know, I wouldn't award it.

10:16:13 23 MR. BUNT: Okay. Thank you, ma'am. I really  
10:16:16 24 appreciate your candor.

10:16:17 25 Yes, was it Ms. Carpenter? Did you feel the same

10:16:20 1 way?

10:16:20 2 JUROR CARPENTER: Yes.

10:16:21 3 MR. BUNT: Okay. How -- tell me more about that.

10:16:24 4 JUROR CARPENTER: I just think that's a lot of

10:16:26 5 money.

10:16:26 6 MR. BUNT: And you would have difficulty awarding

10:16:28 7 that much money no matter what the evidence was?

10:16:30 8 JUROR CARPENTER: Yes.

10:16:31 9 MR. BUNT: Okay. Thank you, ma'am. I do

10:16:33 10 appreciate your honesty.

10:16:34 11 Was there somebody else on this -- yes, ma'am,

10:16:38 12 Ms. Smith?

10:16:39 13 JUROR SMITH: I believe it's an excessive amount.

10:16:42 14 MR. BUNT: No matter what the evidence is, what

10:16:43 15 the savings, cost, profits, all that sort of stuff?

10:16:48 16 JUROR SMITH: Yes, sir.

10:16:48 17 MR. BUNT: Okay. And you would have difficulty

10:16:50 18 awarding that sum regardless of what the evidence showed?

10:16:53 19 JUROR SMITH: Yes, sir.

10:16:54 20 MR. BUNT: Thank you, ma'am. I appreciate that.

10:16:55 21 Well, let me ask this as a follow-on question. As

10:17:00 22 His Honor told you -- oh, I apologize. Thank you, sir.

10:17:03 23 Right there, too. Yes, sir, Mr. Holladay?

10:17:06 24 JUROR HOLLADAY: Yes, sir. I -- I wouldn't

10:17:08 25 necessarily say no, but depending on the -- I guess the

10:17:12 1 relative scale of things, it may or may not be appropriate.  
10:17:15 2 But just to say for that amount of money, I would  
10:17:19 3 originally say no, but it would depend on the relative  
10:17:22 4 scale.

10:17:22 5 MR. BUNT: Okay. Let me see if I can make sure  
10:17:25 6 I'm clear on this.

10:17:26 7 You were saying that you -- it depends on the  
10:17:31 8 evidence?

10:17:32 9 JUROR HOLLADAY: Yes, sir, that's what I would --  
10:17:33 10 I would say or the value of the company in assets and  
10:17:38 11 things of that matter.

10:17:39 12 MR. BUNT: And are you starting out thinking that  
10:17:42 13 it would be difficult, though, to ever award \$300 million  
10:17:45 14 in a case?

10:17:46 15 JUROR HOLLADAY: Yes, sir.

10:17:46 16 MR. BUNT: Okay. Thank you, sir. I appreciate  
10:17:48 17 that.

10:17:48 18 We have two more. Ms. -- Ms. Kelley.

10:17:55 19 JUROR KELLEY: Yes.

10:17:56 20 MR. BUNT: Yes, ma'am. Can you elaborate on that?

10:17:59 21 JUROR KELLEY: I just feel like that is an  
10:18:01 22 excessive amount.

10:18:02 23 MR. BUNT: Okay. And you would have difficulty  
10:18:04 24 awarding that sum of money regardless of what the evidence  
10:18:06 25 was?

10:18:07 1 JUROR KELLEY: I -- I really think that I would.

10:18:10 2 I'm -- I'm kind of with him, because I don't know all the

10:18:13 3 information, but that seems a little bit extreme to me.

10:18:18 4 MR. BUNT: Okay. And Mr. Traylor?

10:18:22 5 JUROR TRAYLOR: That's a very excessive amount of

10:18:24 6 money. You know, I have a farmer's point of view. I just

10:18:28 7 don't agree. I'm sorry.

10:18:29 8 MR. BUNT: Thank you, sir. I appreciate that.

10:18:31 9 So let me ask this: My client, USAA, provides

10:18:39 10 financial services to military and military families.

10:18:43 11 These services include both banking and insurance.

10:18:48 12 Is there anybody here who's had a bad experience

10:18:51 13 with USAA, either through their insurance or through their

10:18:55 14 banking sector?

10:18:56 15 Over here on the jury box, is there anybody who's

10:18:59 16 had a bad experience?

10:19:01 17 Over here in the gallery, is there anybody who's

10:19:03 18 had a bad experience with USAA?

10:19:06 19 Okay. I'm not seeing any hands.

10:19:08 20 Could I get a show of hands of how many of you in

10:19:12 21 the gallery -- I'm sorry, in the jury box work at a bank or

10:19:16 22 have worked at a bank?

10:19:19 23 Yes, ma'am, that's Juror No. 12, Ms. Faulkner.

10:19:26 24 What did you do at the bank? I believe you said you were

10:19:29 25 retired from the bank, didn't you?

10:19:31 1 JUROR FAULKNER: Yes, retired.

10:19:32 2 MR. BUNT: What did you do there?

10:19:34 3 JUROR FAULKNER: Everything from teller to a

10:19:38 4 branch manager.

10:19:39 5 MR. BUNT: Okay. Thank you, ma'am. I appreciate

10:19:40 6 that.

10:19:41 7 Anybody else in the jury box -- yes, ma'am,

10:19:44 8 Ms. Hutto, Juror No. 1.

10:19:47 9 JUROR HUTTO: That was a very long time ago. Bank

10:19:49 10 by mail, things like that.

10:19:51 11 MR. BUNT: Okay. And was that -- where was that

10:19:53 12 that you were working?

10:19:54 13 JUROR HUTTO: Texas Commerce Bank in Longview.

10:19:57 14 MR. BUNT: How long ago, 15 years ago or so?

10:20:00 15 JUROR HUTTO: 30.

10:20:00 16 MR. BUNT: Okay. Anything about that experience

10:20:02 17 that would make it difficult for you to sit on this jury?

10:20:05 18 JUROR HUTTO: No.

10:20:05 19 MR. BUNT: Anybody else on the jury box who's

10:20:07 20 worked at a bank?

10:20:09 21 Okay. How about over in the gallery, any folks?

10:20:14 22 Yes, ma'am. It is Ms. Haines, Juror No. 26. I

10:20:18 23 believe you said in your questionnaire form you had worked

10:20:21 24 at a bank; is that right?

10:20:22 25 JUROR HAINES: Yes. My education is in banking,

10:20:24 1 and I worked at a bank for 10 years throughout college and  
10:20:29 2 post-college.

10:20:31 3 MR. BUNT: And then you also -- your husband --

10:20:33 4 JUROR HAINES: My husband is -- yeah, he's been  
10:20:35 5 working at a credit union. That's actually how we met, at  
10:20:38 6 a banking conference, and so, yeah, he's worked at a credit  
10:20:41 7 union -- the current one for seven years, when we moved to  
10:20:42 8 Texas. Prior to that, he worked at a local credit union in  
10:20:44 9 Illinois for 23 years.

10:20:48 10 MR. BUNT: Okay. Thank you very much.

10:20:49 11 Can I see a show of hands -- well, actually I  
10:20:52 12 think y'all provided me some of this information.

10:20:55 13 Mr. Parras, Juror No. 4, you indicated that you  
10:21:05 14 had served in the military; is that correct?

10:21:07 15 JUROR PARRAS: Yes, sir.

10:21:07 16 MR. BUNT: I apologize, can you remind me which  
10:21:10 17 branch of the service you were in?

10:21:12 18 JUROR PARRAS: Air Force.

10:21:13 19 MR. BUNT: U.S. Air Force. First of all, thank  
10:21:15 20 you for your service, sir.

10:21:16 21 And, second, you understand that USAA provides  
10:21:19 22 insurance and banking service to military members. Have  
10:21:23 23 you -- I don't believe you raised your hand that you had  
10:21:25 24 ever used USAA.

10:21:27 25 JUROR PARRAS: No, I haven't.

10:21:28 1 MR. BUNT: Do you have any friends or family  
10:21:30 2 members who have used USAA?

10:21:32 3 JUROR PARRAS: Not that I know of.

10:21:33 4 MR. BUNT: Haven't heard -- haven't heard of  
10:21:36 5 anybody with negative experiences about USAA?

10:21:39 6 JUROR PARRAS: No, I haven't.

10:21:41 7 MR. BUNT: And is there -- assuming you could be  
10:21:43 8 fair to both USAA and Wells Fargo in this matter?

10:21:45 9 JUROR PARRAS: I think so.

10:21:46 10 MR. BUNT: Okay. Thank you, sir.

10:21:47 11 Also, Mr. Howard, Juror No. 10, you served in the  
10:21:58 12 military as well, didn't you, sir?

10:22:00 13 JUROR HOWARD: Yes, sir.

10:22:00 14 MR. BUNT: And was that the Army, U.S. Army?

10:22:03 15 JUROR HOWARD: Yes, sir.

10:22:04 16 MR. BUNT: Again, thank you for your service. And  
10:22:06 17 I would have the same questions for you that I had for  
10:22:09 18 Mr. Parras. You didn't mention you had used USAA, but do  
10:22:12 19 you have any friends or family members who have?

10:22:14 20 JUROR HOWARD: I use AAA for insurance.

10:22:17 21 MR. BUNT: Okay.

10:22:18 22 JUROR HOWARD: Car insurance. That's all.

10:22:19 23 MR. BUNT: Any bad experiences about that?

10:22:21 24 JUROR HOWARD: No, sir.

10:22:22 25 MR. BUNT: And would that experience make it

10:22:24 1 difficult for you to be fair to both USAA and to Wells  
10:22:27 2 Fargo?

10:22:28 3 JUROR HOWARD: Yes, because I've used Wells Fargo  
10:22:31 4 as a bank 20 years ago or better.

10:22:35 5 MR. BUNT: Okay. So you could be fair to both of  
10:22:37 6 them?

10:22:39 7 JUROR HOWARD: Yes, sir.

10:22:39 8 MR. BUNT: Thank you, sir. I appreciate that.

10:22:41 9 Also, Mr. Blaylock, Juror No. 20, you served in  
10:22:53 10 the military also, didn't you, sir?

10:22:54 11 JUROR BLAYLOCK: Yes, I did.

10:22:55 12 MR. BUNT: And did you say U.S. Army?

10:22:57 13 JUROR BLAYLOCK: Yes.

10:22:58 14 MR. BUNT: Again, thank you, sir, for your  
10:23:00 15 service.

10:23:00 16 The same questions to you. Do you -- have any of  
10:23:03 17 your family members or friends used USAA?

10:23:06 18 JUROR BLAYLOCK: Not to my knowledge.

10:23:09 19 MR. BUNT: Okay. So you wouldn't have any issue  
10:23:12 20 being fair to both Wells Fargo and to -- and to USAA,  
10:23:17 21 correct?

10:23:17 22 JUROR BLAYLOCK: Yes, I would have an issue.

10:23:21 23 MR. BUNT: Okay. What would that be?

10:23:25 24 JUROR BLAYLOCK: I'd like to address this question  
10:23:29 25 maybe to Judge Gilstrap.

10:23:30 1 MR. BUNT: We can certainly do that. Thank you,  
10:23:32 2 sir. I appreciate that.

10:23:34 3 THE COURT: We'll talk about it at another time,  
10:23:37 4 sir.

10:23:37 5 MR. BUNT: Mr. Laird, have -- you have a technical  
10:23:42 6 background -- yes, sir, that's Juror No. 5.

10:23:46 7 JUROR LAIRD: Yes, sir.

10:23:47 8 MR. BUNT: And have you written code -- source  
10:23:49 9 code?

10:23:49 10 JUROR LAIRD: Yes, sir.

10:23:50 11 MR. BUNT: You do that as part of your job?

10:23:52 12 JUROR LAIRD: Not presently, no.

10:23:54 13 MR. BUNT: But you have in the past?

10:23:56 14 JUROR LAIRD: Yes, sir.

10:23:56 15 MR. BUNT: Okay. Thank you, sir. I appreciate  
10:23:58 16 that.

10:23:58 17 How many of you have -- let's say in the jury box,  
10:24:00 18 how many of you have used a phone to deposit a check  
10:24:03 19 before? Oh, quite a few of you.

10:24:06 20 Okay. Ms. Hammond --

10:24:10 21 JUROR HAMMOND: Yes.

10:24:11 22 MR. BUNT: -- did -- you raised your hand. What  
10:24:13 23 bank do you use for that?

10:24:14 24 JUROR HAMMOND: Navy Federal Credit Union.

10:24:16 25 MR. BUNT: Okay. Do you like that app?

10:24:18 1 JUROR HAMMOND: Yes.

10:24:19 2 MR. BUNT: Okay. Do you happen to know if that

10:24:21 3 app has auto capture where it will automatically take a

10:24:25 4 picture of the check without you having to push any

10:24:29 5 buttons?

10:24:29 6 JUROR HAMMOND: It does.

10:24:30 7 MR. BUNT: It does. Okay. Thank you.

10:24:31 8 Who -- who else on the first row has used -- yes,

10:24:35 9 sir, Mr. Laird. You've used it? How do you -- how do you

10:24:38 10 like that?

10:24:38 11 JUROR LAIRD: I use it every time I have a paper

10:24:42 12 check, but I hardly ever have paper checks anymore, so...

10:24:46 13 MR. BUNT: Does yours have the auto capture

10:24:49 14 feature also?

10:24:49 15 JUROR LAIRD: Yes.

10:24:49 16 MR. BUNT: Okay. Thank you.

10:24:50 17 And, Mr. Cothren, you've used the mobile deposit?

10:24:54 18 JUROR COTHREN: Yes, I have.

10:24:55 19 MR. BUNT: And does your -- your phone app have

10:24:57 20 the -- the manual capture, or is it the automatic capture

10:25:01 21 that you don't have to push any buttons?

10:25:04 22 JUROR COTHREN: The last time I used it, it was

10:25:06 23 manual.

10:25:07 24 MR. BUNT: Thank you, sir. I appreciate that.

10:25:09 25 Over here in the gallery -- well, I apologize,

10:25:11 1 back row, was there somebody who had used mobile deposit?

10:25:16 2 Okay. Over in the gallery, quite a few of you.

10:25:22 3 Let me start with Mr. Holladay. You've used

10:25:26 4 mobile phone deposit?

10:25:28 5 JUROR HOLLADAY: Yes, sir.

10:25:28 6 MR. BUNT: And how do you like that? Is it good,

10:25:31 7 bad?

10:25:31 8 JUROR HOLLADAY: Yes, sir, I like it.

10:25:32 9 MR. BUNT: Okay. Does your phone app have the

10:25:35 10 automatic capture feature?

10:25:36 11 JUROR HOLLADAY: I do not believe so.

10:25:38 12 MR. BUNT: Okay.

10:25:39 13 JUROR HOLLADAY: Chase -- Chase Bank.

10:25:42 14 MR. BUNT: Thank you, sir.

10:25:43 15 Who else on -- was there anybody else on this row?

10:25:46 16 Okay. How about the next row? Anybody else who

10:25:54 17 has used mobile deposit? Okay. Looks like No. -- yes,

10:25:58 18 ma'am, Ms. Haines?

10:26:00 19 JUROR HAINES: Yes, I use it all the time for

10:26:02 20 personal and my business.

10:26:03 21 MR. BUNT: And I'm assuming probably from East

10:26:08 22 Texas Professional Credit Union?

10:26:08 23 JUROR HAINES: That is correct.

10:26:08 24 MR. BUNT: And does it have the automatic capture

10:26:08 25 feature to it?

10:26:09 1 JUROR HAINES: You hit the button front and back

10:26:12 2 to take the image.

10:26:13 3 MR. BUNT: So you actually have to push the button

10:26:15 4 to do that?

10:26:16 5 JUROR HAINES: Yes, yes.

10:26:17 6 MR. BUNT: Okay. And then, Mr. Callison, you've

10:26:18 7 used remote deposit?

10:26:22 8 JUROR CALLISON: Yes, sir.

10:26:23 9 MR. BUNT: Okay. And how do you -- do you like

10:26:23 10 that, don't like it?

10:26:23 11 JUROR CALLISON: I like it.

10:26:24 12 MR. BUNT: Okay. Does your phone app have the

10:26:25 13 manual or is it automatic capture?

10:26:28 14 JUROR CALLISON: I've used the Regions and

10:26:32 15 Capital One app, and you just zoom in -- I mean, just get

10:26:33 16 your camera right above it, and it takes the picture, so --

10:26:33 17 MR. BUNT: It takes it by itself?

10:26:35 18 JUROR CALLISON: Yes.

10:26:36 19 MR. BUNT: Okay. Thank you.

10:26:37 20 Some of you had expressed strong feelings about

10:26:41 21 lawsuits in your questionnaires.

10:26:42 22 I believe -- Ms. Blackmon, yes, ma'am? You had

10:26:48 23 said, I think if I've got this right, dislike suits with

10:26:53 24 big awards. No -- no intent. Did I get that correct?

10:26:59 25 JUROR BLACKMON: To be honest, I can't remember

10:27:01 1 exactly what I wrote. I just have a lot of problems with  
10:27:04 2 big, huge awards that don't seem to be justified. But the  
10:27:08 3 ones I'm mainly referring to would be ones where injury  
10:27:12 4 would have been the issue.

10:27:15 5 MR. BUNT: Okay. Well, you said something about  
10:27:16 6 intent in there, I believe.

10:27:18 7 JUROR BLACKMON: Yeah, if -- if -- a lot of times  
10:27:21 8 you see these personal injury trial lawyers, and they --  
10:27:24 9 they're looking for somebody, and they're going to help  
10:27:26 10 them make a buck while they're making a buck, as well. And  
10:27:30 11 the -- a lot of times the accident was not intentional. It  
10:27:34 12 was -- you know, accidents happen. That's why they call  
10:27:36 13 them accidents.

10:27:37 14 MR. BUNT: Sure.

10:27:38 15 JUROR BLACKMON: And I have a problem when someone  
10:27:41 16 goes after somebody just because they can get a check.

10:27:44 17 MR. BUNT: Well, let me ask you this because a  
10:27:46 18 patent case does not require intent. For instance, if  
10:27:50 19 somebody comes and builds a house on your piece of  
10:27:52 20 property, it doesn't matter that they didn't know it was  
10:27:55 21 your piece of property. They're still going to have to get  
10:27:58 22 off when you tell them to.

10:27:59 23 Is that going to start you out thinking -- making  
10:28:02 24 it difficult for you to sit on this jury because there's a  
10:28:04 25 no-intent element in an infringement case?

10:28:06 1 JUROR BLACKMON: No.

10:28:07 2 MR. BUNT: Okay. Thank you, ma'am. I appreciate

10:28:08 3 that.

10:28:08 4 Mr. Coleman, I believe you said that you had

10:28:14 5 issues with frivolous lawsuits. And I think everybody

10:28:16 6 would probably agree with that. But you understand I have

10:28:19 7 filed a lawsuit against Wells Fargo on behalf of USAA.

10:28:25 8 Because of your feelings about lawsuits, am I going to be

10:28:28 9 starting out a little bit behind Wells Fargo?

10:28:32 10 JUROR COLEMAN: I kind of agree with what she

10:28:35 11 said. And I've -- I've seen some really silly stuff. And

10:28:38 12 that's what I don't have much patience -- I would say in

10:28:43 13 response to your question about 300 million, you'd have to

10:28:45 14 knock it out of the park.

10:28:46 15 MR. BUNT: Okay. Well, let me ask another

10:28:48 16 question about that because Judge Gilstrap has told us that

10:28:53 17 the burden of proof for USAA is to prove by a preponderance

10:28:59 18 of the evidence that there's been infringement.

10:29:00 19 JUROR COLEMAN: I understand all that.

10:29:02 20 MR. BUNT: And that there's been damages.

10:29:03 21 JUROR COLEMAN: Yes, sir.

10:29:04 22 MR. BUNT: And we intend to do that. And you

10:29:06 23 heard him say that if you tip the scales in favor, then

10:29:09 24 that's a preponderance of the evidence?

10:29:09 25 JUROR COLEMAN: Yes, sir.

10:29:10 1 MR. BUNT: Are you saying that the -- the Scales  
10:29:14 2 of Justice would have to turn more than just a  
10:29:17 3 preponderance of the evidence to find damages in that  
10:29:19 4 amount?

10:29:19 5 JUROR COLEMAN: No, sir, because I was instructed  
10:29:21 6 not to.

10:29:21 7 MR. BUNT: Well -- and that's my question. Can  
10:29:23 8 you set that aside and do whatever Judge Gilstrap tells you  
10:29:26 9 as far as the burden of proof?

10:29:28 10 JUROR COLEMAN: Certainly I can. Like I said, I'm  
10:29:31 11 just -- yes, I can.

10:29:32 12 MR. BUNT: I appreciate that.

10:29:33 13 JUROR COLEMAN: Yes, sir.

10:29:33 14 MR. BUNT: I want to hear what you think.

10:29:34 15 Anybody else on the first two rows over here who  
10:29:39 16 would have difficulty applying the burden of proof that  
10:29:44 17 Judge Gilstrap said, the preponderance of the evidence, in  
10:29:46 18 a case involving \$300 million?

10:29:50 19 Okay. How about over here?

10:29:54 20 All right. The -- Wells Fargo is being  
10:29:59 21 represented by the Winston & Strawn law firm. You met  
10:30:01 22 Mr. Tom Melsheimer a moment ago. He's the lead counsel.  
10:30:04 23 Winston & Strawn, they have offices all over the world.  
10:30:09 24 Mr. Melsheimer has an office in Dallas.

10:30:11 25 Is there anybody here who knows or has a

10:30:13 1 relationship with Winston & Strawn or with Mr. Melsheimer?

10:30:17 2 Okay. Also, more locally, we've got Mr. Wesley  
10:30:22 3 Hill. He lives in Tyler and practices in Longview at the  
10:30:25 4 Ward Smith & Hill law firm.

10:30:29 5 Is there anybody here who knows Mr. Hill or knows  
10:30:32 6 his firm?

10:30:34 7 Let me just list out some of the folks at his  
10:30:37 8 firm. There's Johnny Ward, Mr. T. John Ward, Mr. Bruce  
10:30:41 9 Smith, Ms. Claire Henry, Ms. Andrea Fair, Mr. Brett Miller,  
10:30:47 10 and Mr. Hill's legal assistant, Wendy Cavasos. Anybody  
10:30:56 11 know those individuals? I'm not seeing any hands.

10:30:57 12 I believe Mr. Mike Collins is assisting Wells  
10:31:02 13 Fargo picking the jury. He's from Tyler. Anybody there  
10:31:06 14 who knows Mr. Collins?

10:31:08 15 And then also sitting beside Mr. Collins is  
10:31:12 16 Mr. Don Nichols. Anybody know Mr. Don Nichols? He's  
10:31:16 17 assisting with the jury also.

10:31:17 18 Any of you own Wells Fargo stock? Anybody -- if  
10:31:22 19 you know? I see Juror No. 9, Ms. Carpenter. You're not  
10:31:30 20 sure if -- just have no way of knowing?

10:31:30 21 JUROR CARPENTER: I may have. I don't know.

10:31:32 22 MR. BUNT: Okay. Thank you. If you don't know,  
10:31:33 23 that's fine.

10:31:34 24 Anybody who knows if they actually own Wells Fargo  
10:31:37 25 stock?

10:31:38 1 How many of you are current customers of Wells  
10:31:42 2 Fargo?

10:31:45 3 Okay. Ms. Carpenter -- well, let me start with  
10:31:49 4 Ms. Hutto. She's No. 1.

10:31:53 5 JUROR HUTTO: We purchased a bed that --

10:31:56 6 THE COURT: Do you mind standing up, ma'am?

10:31:59 7 JUROR HUTTO: The place where we bought it from  
10:32:02 8 financed through them.

10:32:04 9 MR. BUNT: Through Wells Fargo?

10:32:05 10 JUROR HUTTO: Yes.

10:32:06 11 MR. BUNT: Of course, you understand USAA is suing  
10:32:10 12 Wells Fargo. You probably see where I'm going with this.

10:32:12 13 Am I going to be starting off a little bit behind Wells  
10:32:15 14 Fargo because of that experience?

10:32:15 15 JUROR HUTTO: No.

10:32:16 16 MR. BUNT: Okay. Thank you, ma'am.

10:32:17 17 Who else currently banks with Wells Fargo?

10:32:20 18 Yes, ma'am, Ms. Carpenter, Juror No. 9?

10:32:23 19 JUROR CARPENTER: We have a student loan for my  
10:32:28 20 youngest child through Wells Fargo.

10:32:29 21 MR. BUNT: Okay. Same question to you. My client  
10:32:32 22 has sued Wells Fargo. You do banking with Wells Fargo.

10:32:36 23 And is my client starting out a little bit behind as a  
10:32:41 24 result of you having some interactions with Wells Fargo?

10:32:43 25 JUROR CARPENTER: No.

10:32:43 1 MR. BUNT: Thank you, ma'am.

10:32:44 2 Who else?

10:32:47 3 Yes, ma'am, Ms. McCain, Juror No. 14. Do you bank

10:32:52 4 with Wells Fargo now?

10:32:54 5 JUROR MCCAIN: They -- they've done some of my

10:32:57 6 management -- my money for me. And I am not biassed one

10:33:02 7 way or the other.

10:33:03 8 MR. BUNT: Thank you, ma'am. I appreciate you

10:33:06 9 anticipating my question.

10:33:06 10 Does anybody work -- well, I'm sorry, let's go

10:33:11 11 over here. Anybody over here who -- who banks with Wells

10:33:14 12 Fargo?

10:33:16 13 Okay. No hands.

10:33:18 14 Anybody work for Wells Fargo or have a family

10:33:21 15 member or friend who works for Wells Fargo? I don't see

10:33:26 16 any hands.

10:33:27 17 Ms. Hammond, were you a -- Juror No. 2.

10:33:38 18 I'm looking through my notes hurriedly. Did --

10:33:44 19 did you -- were you involved in a lawsuit as a Defendant in

10:33:47 20 a suit?

10:33:47 21 JUROR HAMMOND: No.

10:33:48 22 MR. BUNT: Okay. I apologize. I wrote that down

10:33:50 23 wrong.

10:33:50 24 Ms. Perkins, Juror No. 16, I believe you indicated

10:33:56 25 in your questionnaire form that you were married to a

10:34:00 1 lawyer at one time?

10:34:01 2 JUROR PERKINS: Yes, sir.

10:34:02 3 MR. BUNT: Who was that?

10:34:03 4 JUROR PERKINS: William Perkins.

10:34:05 5 MR. BUNT: And where did he practice law?

10:34:07 6 JUROR PERKINS: Louisiana.

10:34:08 7 MR. BUNT: Okay. All right.

10:34:09 8 And, Mr. Marks, Juror No. 27, your wife worked for

10:34:21 9 the Carlyle law firm; is that correct?

10:34:24 10 JUROR MARKS: She did, yes.

10:34:26 11 MR. BUNT: How long ago has that been?

10:34:31 12 JUROR MARKS: About 15 -- about 16 years ago.

10:34:34 13 MR. BUNT: Anything about that experience that

10:34:35 14 would make it difficult for you to sit on this jury?

10:34:39 15 JUROR MARKS: No.

10:34:40 16 MR. BUNT: You feel like you could be fair to both

10:34:42 17 USAA and Wells Fargo in this case?

10:34:44 18 JUROR MARKS: Yes.

10:34:45 19 MR. BUNT: Thank you, sir. I appreciate that.

10:34:47 20 THE COURT: You have five minutes remaining,

10:34:49 21 counsel.

10:34:49 22 MR. BUNT: You'd be surprised at how often this

10:34:55 23 happens. Is there anybody on the jury panel who knows one

10:34:58 24 another? I bet -- I figured I'd get some hands.

10:35:04 25 Okay. Juror No. 7, Mr. Cothren, who do you know?

10:35:08 1 JUROR COTHREN: Mr. Stuart Callison, Juror No. 28.

10:35:16 2 MR. BUNT: And how do y'all know each other?

10:35:19 3 JUROR COTHREN: We're close acquaintances.

10:35:21 4 MR. BUNT: You see each other around town or --

10:35:24 5 JUROR COTHREN: Yes.

10:35:24 6 MR. BUNT: Y'all live in the same community?

10:35:26 7 JUROR COTHREN: We live in the same community. I

10:35:28 8 was real -- growing up, I was real close to his wife, went

10:35:32 9 to church together many years as a child. Just real good

10:35:36 10 acquaintances. Don't see him all that often, but we're

10:35:39 11 close friends.

10:35:40 12 MR. BUNT: Well, let me ask you this: You know,

10:35:42 13 invariably, if the two of y'all ended up on a jury

10:35:46 14 together, would it be difficult for you if you had

10:35:49 15 different opinions than he did and wanted to go one

10:35:52 16 direction and he wanted to go the other? Is that going to

10:35:55 17 make things difficult for you sitting on a jury?

10:35:57 18 JUROR COTHREN: No, sir.

10:35:58 19 MR. BUNT: Okay. Thank you, sir.

10:35:59 20 Before we leave the jury box, was there somebody

10:36:03 21 else who knew someone on the panel?

10:36:05 22 Okay. Yes, sir, let's go back to Mr. --

10:36:12 23 Mr. Blaylock -- no, I'm sorry, Mr. Traylor, do you know

10:36:16 24 somebody on the panel?

10:36:20 25 JUROR TRAYLOR: Yes, I know Ricky Tigert.

10:36:22 1 MR. BUNT: Okay. And how do y'all know each  
10:36:24 2 other?

10:36:25 3 JUROR TRAYLOR: Our fathers were lifetime friends.

10:36:27 4 MR. BUNT: Okay. So do you see him regularly?

10:36:29 5 JUROR TRAYLOR: Pretty regular, yes. I worked on  
10:36:30 6 his kid's show calves.

10:36:30 7 MR. BUNT: Well, same question I asked

10:36:30 8 Mr. Cothren. Do you think that would cause any  
10:36:34 9 difficulties --

10:36:34 10 JUROR TRAYLOR: Not at all. I can think on my  
10:36:36 11 own.

10:36:36 12 MR. BUNT: I appreciate that.

10:36:38 13 Same question to you, Mr. Tigert. I'm assuming  
10:36:41 14 you feel the same way as -- as --

10:36:44 15 JUROR TIGERT: Yes, no problem at all.

10:36:46 16 MR. BUNT: Thank you, sir.

10:36:47 17 JUROR TIGERT: I know this guy right here, Mikey  
10:36:49 18 Byrd.

10:36:49 19 MR. BUNT: Okay. And how do you know him?

10:36:51 20 JUROR TIGERT: Just -- we grew up together in  
10:36:53 21 Daingerfield.

10:36:54 22 MR. BUNT: I told y'all this happens quite a bit.

10:36:56 23 So any issues, Mr. Byrd, with -- if you got on the  
10:37:00 24 same panel as -- as Mr. Tigert, is that going to cause hard  
10:37:04 25 feelings if you end up coming down to a different decision

10:37:07 1 than he did?

10:37:09 2 JUROR BYRD: No issues at all.

10:37:10 3 THE COURT: Thank you, sir.

10:37:11 4 Let me ask this, just one final question:

10:37:17 5 Invariably, people come back later and say, I wish you'd

10:37:22 6 ask this question. If only you'd known this, you would

10:37:24 7 have known that I wasn't the right person for this jury.

10:37:27 8 So I'm sure I have left out many questions.

10:37:30 9 Let me just ask it like this: Is there anyone

10:37:33 10 here who feels like this is just not the right case for

10:37:38 11 you, and if you could just raise your hands and -- and let

10:37:41 12 me know who y'all are. Anybody in the jury box?

10:37:45 13 Yes, ma'am, Ms. Hrelja? And is it for the same

10:37:50 14 reasons that you mentioned earlier today about damages?

10:37:55 15 JUROR HRELJA: It is. But I also don't think I'm

10:37:58 16 knowledgeable enough on what y'all are talking about to

10:38:03 17 make a biased decision on that.

10:38:06 18 MR. BUNT: Okay. I appreciate that.

10:38:07 19 JUROR HRELJA: I deal with small children on a

10:38:09 20 daily basis.

10:38:10 21 MR. BUNT: That's okay. That's fine.

10:38:11 22 Anybody else?

10:38:12 23 Yes, sir, Mr. Parras?

10:38:18 24 JUROR PARRAS: Well, it's -- it's not a personal

10:38:21 25 opinion, but my daughter had problems with Wells Fargo.

10:38:28 1 And I sign a check to my grandkids over there in Katy every  
10:38:35 2 month, and, boy, they're five months behind on running  
10:38:39 3 those checks through. They put them in through Wells  
10:38:42 4 Fargo, and checks don't show up over here in my bank.

10:38:45 5 MR. BUNT: Okay. I appreciate that.

10:38:49 6 Anybody else who feels like it would be difficult  
10:38:53 7 sitting on this jury, for whatever reason?

10:38:56 8 How about -- yes, sir, Mr. Traylor?

10:39:03 9 JUROR TRAYLOR: This goes back to the money  
10:39:05 10 involved in this case here. I feel like -- and this is  
10:39:09 11 outside looking in -- I feel like for this type money, I  
10:39:12 12 feel like both parties involved here have been overcharged  
10:39:16 13 if we have this type of money involved.

10:39:16 14 MR. BUNT: Okay.

10:39:18 15 JUROR TRAYLOR: I just don't -- don't like it at  
10:39:20 16 all.

10:39:20 17 MR. BUNT: Okay. I appreciate that. Thank you,  
10:39:21 18 sir.

10:39:22 19 Anybody -- yes, sir, Mr. Holladay?

10:39:25 20 JUROR HOLLADAY: In the past -- probably 10 years  
10:39:27 21 ago, or when I was in graduate school, my wife worked for a  
10:39:32 22 bank and was wrong -- wrongfully accused without any  
10:39:37 23 evidence by a bank and was mistreated badly. And it just  
10:39:42 24 hasn't set well with my family for the big bank, which she  
10:39:48 25 went through over nothing.

10:39:49 1 MR. BUNT: Okay.

10:39:50 2 JUROR HOLLADAY: I'd be leaning probably toward

10:39:52 3 this side going into it.

10:39:53 4 MR. BUNT: Okay. I appreciate that, sir.

10:39:55 5 Anybody else that I left out?

10:39:58 6 Yes, sir, Mr. Marks, Juror No. 27?

10:40:03 7 JUROR MARKS: Yes. I feel like that I just don't

10:40:06 8 have the knowledge to get the understanding of what's going

10:40:12 9 on. And I'd just be following somebody else.

10:40:15 10 MR. BUNT: Okay. Thank you, sir. I really do

10:40:17 11 appreciate all the information y'all have provided.

10:40:19 12 THE COURT: Counsel, your time has expired.

10:40:22 13 MR. BUNT: Thank you, Your Honor.

10:40:22 14 I look forward to presenting our case to you.

10:40:25 15 THE COURT: All right. Mr. Hill, you may address

10:40:26 16 the panel on behalf of the Defendant.

10:40:27 17 MR. HILL: Thank you, Your Honor.

10:40:28 18 THE COURT: Would you like a warning on your time?

10:40:30 19 MR. HILL: Yes, sir, I'd like a five-minute

10:40:32 20 warning, as well, Judge.

10:40:33 21 THE COURT: All right. You may proceed.

10:40:36 22 MR. HILL: Good morning, ladies and gentlemen.

10:40:40 23 Let me say right upfront, Wells Fargo does not

10:40:43 24 infringe on USAA's patents. We don't infringe. We don't

10:40:49 25 trespass. And we don't owe them any money for anything,

10:40:53 1 okay? I just want to get that out there right upfront.

10:40:56 2 THE COURT: Counsel, this is not the time to make  
10:40:58 3 an argument. You're here to ask questions of the panel,  
10:41:00 4 and you need to proceed on that basis.

10:41:02 5 MR. HILL: Thank you, Your Honor.

10:41:02 6 Ladies and gentlemen, Wells Fargo's auto capture  
10:41:06 7 feature in its mobile deposit app, you'll learn, is what  
10:41:10 8 USAA accuses of infringement in this case. Our banking app  
10:41:14 9 works different than the narrow, single way of doing auto  
10:41:19 10 capture that USAA's patents tries to cover -- claims to  
10:41:24 11 cover, okay?

10:41:25 12 So that's what you're going to hear about in this  
10:41:28 13 case. They mentioned you're going to hear that they claim  
10:41:30 14 we infringe. We deny it. We do deny it because our  
10:41:34 15 product works differently. They have a patent on one way  
10:41:38 16 of doing it. We do it a different way.

10:41:40 17 Now, the facts of our case are going to come out  
10:41:44 18 in opening statement, and this is not the time for me to  
10:41:48 19 try to argue my case, as the Judge mentioned, or tell you  
10:41:51 20 about the facts of the case, but I want you to understand  
10:41:54 21 where we stand, okay? We deny these allegations, and we --

10:41:57 22 THE COURT: Mr. Hill, you've said that about six  
10:41:59 23 times. You're not here to argue the merits of this case.  
10:42:02 24 You're either going to ask this panel questions, which  
10:42:04 25 you're entitled to do, or I'm going to make you sit down.

10:42:07 1 MR. HILL: Thank you, Your Honor.

10:42:07 2 THE COURT: Let's proceed.

10:42:08 3 MR. HILL: I appreciate it.

10:42:09 4 Now, thank you for being here. This is an

10:42:14 5 important case that we need your help to resolve, and this

10:42:16 6 is going to be our only chance to speak to you.

10:42:18 7 So just as with Mr. Bunt, he encouraged you to

10:42:22 8 speak up, speak to him, I'm going to encourage you to do

10:42:25 9 the same to me as we ask questions about just how you see

10:42:29 10 things.

10:42:29 11 Now, as mentioned earlier, what we're trying to

10:42:34 12 find out is whether you lean one way or another based on

10:42:36 13 life experience. And that's what we're going to be

10:42:40 14 inquiring about today.

10:42:40 15 I want to start out by telling you, as everybody

10:42:44 16 has, fairly, I'm Wesley Hill. Practice law in Longview.

10:42:48 17 Grew up over in Murchison, Texas in Henderson County. I'm

10:42:54 18 married. I've got a 25-year-old grown son, who is a school

10:42:59 19 teacher in Austin; and a 7th grader, 12-year-old little

10:43:02 20 girl. And I appreciate just getting to talk to you folks

10:43:04 21 today.

10:43:04 22 Now, folks, you saw the patent video this morning,

10:43:07 23 and you got the chance to learn some things. Did anybody

10:43:10 24 learn something that was new? Did you see -- hear things

10:43:14 25 about the patent system this morning in the video that you

10:43:17 1 saw that was different than what you had thought coming  
10:43:20 2 into this case? Anybody? Couple hands.

10:43:25 3 All right. Right here. Let's start -- let's  
10:43:27 4 start with you, Mr. Cothren. Tell me what you saw this  
10:43:31 5 morning that was news to you.

10:43:33 6 JUROR COTHREN: As far as new, all my comment  
10:43:35 7 would be is that I've never seen the process from start to  
10:43:38 8 finish the way it was presented today.

10:43:40 9 MR. HILL: Yes, sir.

10:43:41 10 JUROR COTHREN: I understood generally how it  
10:43:43 11 worked, but not each and every phase of it.

10:43:46 12 MR. HILL: Okay.

10:43:46 13 JUROR COTHREN: And the opportunity to come in  
10:43:48 14 later and add more documents to it.

10:43:52 15 MR. HILL: All right. Thank you, sir.

10:43:53 16 Who else -- who else learned something that they  
10:43:55 17 thought was new about the way the patent system worked.

10:43:58 18 Yes, ma'am, No. 14?

10:43:59 19 JUROR MCCAIN: I did not realize the process was  
10:44:02 20 so overwhelming with the amount of numbers of patents that  
10:44:06 21 are filed.

10:44:06 22 MR. HILL: You didn't realize how many patents get  
10:44:08 23 filed each year?

10:44:09 24 JUROR MCCAIN: That's correct. That's correct.

10:44:16 25 MR. HILL: Thank you, Ms. McCain.

10:44:17 1 Now, ladies and gentlemen, one of the things that  
10:44:19 2 you heard in the patent video this morning is that a patent  
10:44:21 3 is like a deed. It indicates the boundaries defining the  
10:44:25 4 landowner's property, okay? So it sets the limits on the  
10:44:28 5 property. And anyone who learns of a patent can then go  
10:44:32 6 read it and understand exactly what the inventor invented  
10:44:37 7 and the limits that the patent claims set forth.

10:44:41 8 And so what I'd like to do, folks, is talk to you  
10:44:45 9 about what that means, because those of you that make it on  
10:44:48 10 the jury, are going to learn that to prove infringement in  
10:44:51 11 this case, USAA, as the Plaintiff with the burden of proof,  
10:44:55 12 has to show that each and every element, each and every  
10:45:01 13 element of their patent claim is met by the Wells Fargo app  
10:45:07 14 that they're going to accuse of infringement, okay? It's  
10:45:11 15 not like horseshoes or hand grenades where close counts;  
10:45:17 16 you've got to show each and every element.

10:45:18 17 Is that part of things different from what anybody  
10:45:23 18 thought, coming in this morning, about how patents work,  
10:45:27 19 that they're that precise? Was that part different to  
10:45:30 20 anybody?

10:45:32 21 So I want to give you an example. And let me do  
10:45:39 22 that by asking this: Is there anybody who's got a fishing  
10:45:42 23 boat, kind of likes to fish? Fishing boat, likes to fish?  
10:45:47 24 Okay. Let's -- let's start, No. 11. That's -- that's  
10:45:52 25 Ms. Smith.

10:45:53 1 JUROR SMITH: Yes, sir.

10:45:54 2 MR. HILL: Ms. Smith, you've got a fishing boat,

10:45:57 3 you like to fish?

10:45:58 4 JUROR SMITH: Yes, sir.

10:45:58 5 MR. HILL: Tell me this do you have a fish finder

10:45:58 6 on that fishing boat?

10:45:58 7 JUROR SMITH Yes.

10:46:02 8 MR. HILL: You got a Lowrance, you got a

10:46:04 9 Humminbird, a Garmin?

10:46:08 10 JUROR SMITH: Humminbird.

10:46:10 11 MR. HILL: Humminbird, okay. Well, I want you to

10:46:11 12 imagine, Ms. Smith, that if Humminbird came out with a new

10:46:14 13 big fish catching system, okay, that's what they're calling

10:46:18 14 their product, big fish catching system, and Humminbird got

10:46:24 15 a patent on it. And that patent has three elements to it.

10:46:27 16 They're going to monitor for fish, they're going

10:46:30 17 to -- when a big fish is detected, catch the fish with a

10:46:35 18 net, and they're going to put it in the live well, okay?

10:46:39 19 So that's their patent. Monitor for fish. When a big fish

10:46:43 20 is detected, catch it with a net. And, step three, put it

10:46:50 21 in a live well. All right?

10:46:50 22 Now, I want you to imagine, Ms. Smith, that me and

10:46:52 23 you've decided we're going to put us together our own big

10:46:54 24 fish catching system, okay? And our big fish catching

10:46:59 25 system is going to work like this. It's going to catch

10:47:01 1 fish with a net. We're then going to pick out the big  
10:47:04 2 ones. And we're going to put those in the live well.  
10:47:10 3 Okay? So we're going to catch everything with a net, pick  
10:47:14 4 out the big ones, and put them in the live well.  
10:47:17 5 What's the difference between those two?  
10:47:19 6 JUROR SMITH: Not anything, just the order.  
10:47:21 7 MR. HILL: The order, okay. Do you think the  
10:47:23 8 order would matter?  
10:47:25 9 JUROR SMITH: No, not if the three components are  
10:47:28 10 the same, it shouldn't matter.  
10:47:29 11 MR. HILL: Okay. So if we made that product  
10:47:32 12 and --  
10:47:33 13 THE COURT: Counsel, counsel, approach the bench,  
10:47:33 14 please.  
10:47:33 15 MR. HILL: Yes, sir, Your Honor.  
10:47:39 16 THE COURT: Have a seat, ma'am.  
10:47:39 17 (Bench conference.)  
10:47:42 18 THE COURT: Mr. Hill, you began this voir dire  
10:47:45 19 with blatant argument to the jury panel. You continue to  
10:47:48 20 do it repeatedly. I instructed you clearly to stop it.  
10:47:53 21 These are not questions to determine bias or prejudice.  
10:47:58 22 These are not questions to do anything other than to argue  
10:48:01 23 the merits of your case during jury selection.  
10:48:04 24 I am going to deduct three minutes from the  
10:48:06 25 Plaintiff's [sic] closing time as a sanction for that, and

10:48:12 1 I'm going to instruct you not to continue in this vein but  
10:48:15 2 to ask questions seeking to determine the ability of this  
10:48:18 3 panel and its members to be fair and impartial, but not to  
10:48:22 4 argue either overtly or indirectly the merits of your case.

10:48:26 5 MR. HILL: Yes, sir, Your Honor.

10:48:28 6 THE COURT: And if you continue it, I will -- I  
10:48:29 7 will continue to sanction you at higher levels.

10:48:31 8 MR. HILL: Let me say --

10:48:32 9 THE COURT: And I will say this, Mr. Hill: You  
10:48:34 10 have tried multiple lawsuits before me. I have never seen  
10:48:39 11 you conduct yourself this way, and I am very surprised.

10:48:41 12 MR. HILL: Your Honor, if I may. In my own -- to  
10:48:45 13 say, Your Honor, I'm surprised as well to be called down  
10:48:47 14 for it. And I'm not making an excuse. It's not that at  
10:48:51 15 all. I was stating forcefully, but simply stating our  
10:48:55 16 position to start the case, and I -- believe me, Your  
10:48:56 17 Honor, if I thought these questions I was asking now -- I  
10:48:58 18 think you're about to see exactly where this is going.  
10:49:00 19 It's about people's ability to be fair, not arguing the  
10:49:04 20 merits. And I would not go where I thought was argument in  
10:49:07 21 your eyes. So I'm not there intentionally, Your Honor, and  
10:49:09 22 I won't go there anymore.

10:49:11 23 THE COURT: Whether you're intentionally there or  
10:49:13 24 not, you're there, in my view, and you need to continue  
10:49:16 25 this voir dire process in a non-argumentative way.

10:49:19 1 MR. HILL: Yes, sir.

10:49:23 2 MR. SHEASBY: Your Honor, could I ask one

10:49:25 3 question? When you said three minutes from, did you say

10:49:26 4 three minutes from the voir dire or three minutes from

10:49:27 5 closing?

10:49:27 6 THE COURT: Three minutes from closing argument.

10:49:28 7 MR. MELSHEIMER: Thank you, Your Honor.

10:49:29 8 THE COURT: Instead of 30, it's now 27 or 40 it's

10:49:32 9 now 37.

10:49:33 10 MR. HILL: All right.

10:49:34 11 THE COURT: All right. Let's continue.

10:49:36 12 MR. HILL: Thank you, Judge.

10:49:37 13 (Bench conference concluded.)

10:49:42 14 THE COURT: Let's continue.

10:49:42 15 MR. HILL: Thank you, Your Honor.

10:49:43 16 Now, folks, you heard Ms. Smith and I talking

10:49:47 17 about these different things. I usually find people break

10:49:50 18 into one or two camps when they think about patents, okay?

10:49:54 19 One camp is people think, okay, it's different, something

10:49:58 20 may be different, but if you're technically still doing the

10:50:01 21 same thing, that's just a technicality, and that's not

10:50:08 22 fair. Okay?

10:50:08 23 Other people fall into another camp, and they say,

10:50:12 24 rules are the rules, and if you have to meet each and every

10:50:16 25 element, you've got to meet each and every element. And

10:50:19 1 that's kind of a divide we see among the way people often  
10:50:23 2 think about patents.

10:50:23 3 I want to know who thinks they fall into the first  
10:50:26 4 camp; that if it sounds close, it probably isn't fair.

10:50:33 5 It's a technicality if it's just a little bit different.

10:50:39 6 And I think that's probably not fair, and you may have an  
10:50:42 7 issue. Anybody feel that way about it? That's the way you  
10:50:45 8 look at it?

10:50:46 9 Yes, ma'am. No. 16 here, that's Ms. Perkins.

10:50:50 10 JUROR PERKINS: Yes, sir.

10:50:51 11 MR. HILL: Tell me about that, Ms. Perkins.

10:50:53 12 JUROR PERKINS: Changing one widget of an item  
10:50:57 13 does not change the product.

10:50:59 14 MR. HILL: Okay.

10:50:59 15 JUROR PERKINS: Okay. I think sometimes in  
10:51:04 16 patents, particularly, they'll change one size of a screw  
10:51:08 17 and think, okay, now that patent is no longer viable.

10:51:10 18 MR. HILL: Okay.

10:51:11 19 JUROR PERKINS: And I think that's wrong.

10:51:12 20 MR. HILL: All right. Now, let me ask the other  
10:51:15 21 side. Who thinks that different is different, and that's  
10:51:22 22 fair competition? Different is different. And so if you  
10:51:28 23 build a product, you're not the same as their patent. You  
10:51:31 24 do it a different way. Is that fair competition? Anybody  
10:51:37 25 share that point of view? Okay?

10:51:40 1 Now, Ms. -- Ms. Perkins, let me -- let me ask you  
10:51:48 2 one follow-up question about that if you don't mind. If  
10:51:52 3 you were in a case -- I understand how you feel about it if  
10:51:55 4 it's a little different -- if you were in a case and you  
10:51:57 5 were told as part of that case that for the person with the  
10:52:00 6 burden of proof to prove infringement, they have to show  
10:52:04 7 each and every element of the claim, and that if one's  
10:52:09 8 missing, there's no infringement, would you be able to  
10:52:12 9 follow that instruction, or do you think your belief that,  
10:52:16 10 well, close is -- it's not fair?

10:52:19 11 JUROR PERKINS: No, I'm pretty strong in my  
10:52:21 12 belief.

10:52:22 13 MR. HILL: Pretty strong in your belief?

10:52:24 14 JUROR PERKINS: Yes, sir.

10:52:24 15 MR. HILL: So you think you would -- you would  
10:52:25 16 have some issue potentially following that instruction if  
10:52:28 17 follow that?

10:52:28 18 JUROR PERKINS: Yes, sir, I do.

10:52:29 19 MR. HILL: Okay. Thank you, ma'am.

10:52:31 20 Now, let me also talk to you folks about another  
10:52:41 21 thing I think you're going to learn about a patent case.  
10:52:44 22 You're going to learn in a patent case that the words  
10:52:46 23 matter -- the words of the actual patent claims.

10:52:49 24 That's what you saw in the video this morning  
10:52:52 25 where they talked about the claims of the patent, and

10:52:54 1 you're going to learn that the words matter.

10:52:55 2 Is there anybody here that's ever been in a  
10:52:58 3 dispute with an insurance company about coverage?

10:53:02 4 Okay. We've got a couple here.

10:53:05 5 No. 5, yes, sir, Mr. Laird. Been in a dispute  
10:53:09 6 with an insurance company about coverage?

10:53:11 7 JUROR LAIRD: It was simple insurance on furniture  
10:53:14 8 that I bought.

10:53:14 9 MR. HILL: Okay. All right. And in the process  
10:53:17 10 of that, did you learn in discussing your issue with an  
10:53:21 11 insurance company that the words seem to matter a lot,  
10:53:24 12 words of the policy?

10:53:25 13 JUROR LAIRD: Of course.

10:53:26 14 MR. HILL: Okay. Anybody else ever been in a  
10:53:29 15 dispute with an insurance company over policy words or a  
10:53:33 16 contract dispute maybe, something where words really  
10:53:36 17 mattered?

10:53:38 18 Now, here again, I think people often fall into  
10:53:42 19 two camps, okay? One camp says sticking to the words --  
10:53:50 20 sticking to the words of the policy, sticking to the words  
10:53:52 21 of the contract may not reflect the intent. It may be  
10:53:56 22 technical. May be a technicality. And so I'm more  
10:54:01 23 inclined to go with the intent.

10:54:04 24 Anybody feel that way about if they're looking at  
10:54:09 25 a dispute about words, whether it's a contract or something

10:54:13 1 else?

10:54:13 2 The other camp, people look at it and they say,

10:54:17 3 the words are the deal, and you stick to the deal. The

10:54:23 4 words are the words, and you stick to the deal. Who thinks

10:54:26 5 they fall maybe more into that camp?

10:54:29 6 All right. I've got some hands here. Let me see,

10:54:31 7 we didn't get any hands the first time. Everybody

10:54:36 8 generally feel they're in the second camp? Is that what I

10:54:39 9 should take from that? Yeah? So words are the deal.

10:54:41 10 Now, what you're going to learn in this case,

10:54:43 11 ladies and gentlemen, is that the words in a patent case

10:54:49 12 matter because it's those words that define the scope of

10:54:52 13 the invention. And it's those words that limit the scope

10:54:55 14 of the invention, and those are what tells the world what

10:54:58 15 was invented and also what was not invented.

10:55:02 16 So let me ask this question of those of you here:

10:55:07 17 If you are elected -- or chosen to serve on this jury, will

10:55:11 18 each of you commit to me that you will decide the case

10:55:18 19 based on the law the Judge gives you about how you read the

10:55:21 20 words of that patent? Can I get that commitment here from

10:55:26 21 the front row?

10:55:27 22 Is there anybody who thinks they would have

10:55:29 23 trouble doing that? The Judge instructs you on the words

10:55:32 24 of the patent, that you'll have any trouble following those

10:55:34 25 instructions?

10:55:35 1 Anybody on the second row?

10:55:37 2 Anybody out here?

10:55:39 3 All right. Now, before I get too far into this, I

10:55:44 4 want to ask the obvious questions that the lawyers always

10:55:47 5 have to ask in these cases. I want to ask about if you

10:55:50 6 know anybody in the courtroom that may be on the

10:55:52 7 Plaintiff's side of the case, okay?

10:55:54 8 So, first off, you heard earlier the lawyers were

10:55:57 9 introduced to you. There's a law firm called Irell &

10:56:01 10 Manella that is representing USAA, the Plaintiff.

10:56:05 11 Mr. Jason Sheasby from the Los Angeles office of Irell &

10:56:08 12 Manella is here on behalf of them. Anyone familiar with

10:56:12 13 the law firm Irell & Manella or Mr. Sheasby? No? All

10:56:16 14 right.

10:56:16 15 They've also hired, as you met earlier, a local

10:56:20 16 lawyer, Mr. Bunt -- Chris Bunt from over in Tyler. He

10:56:23 17 practices with a firm called Parker, Bunt & Ainsworth.

10:56:27 18 Chris's wife and his -- his family are from the Hallsville

10:56:30 19 area. The Bunts or the Parkers, they're from the

10:56:35 20 Hallsville area.

10:56:37 21 Does anyone have any connections to Mr. Bunt or

10:56:40 22 think they know any of his family -- the Parker family or

10:56:42 23 the Bunt family there in the Hallsville area?

10:56:45 24 All right. Now, the other person or other company

10:56:52 25 you've been asked about in this case is United Services

10:56:58 1 Automobile Association. That's USAA. That's the Plaintiff  
10:57:01 2 in the case. And they are a San Antonio-based Fortune 500  
10:57:05 3 diversified financial services group of companies,  
10:57:08 4 including Texas Department of Insurance-regulated  
10:57:12 5 reciprocal insurance exchange and subsidiaries offering  
10:57:16 6 banking and investing and insurance.

10:57:19 7 Is there anyone here today who has personal  
10:57:22 8 experience -- feels like they know USAA? No?

10:57:29 9 Yes, sir, No. -- it's Mr. Howard?

10:57:35 10 JUROR HOWARD: I know AAA, my insurance. And I  
10:57:41 11 went to there because it was the cheapest and the best.

10:57:44 12 MR. HILL: Okay. Well, let's talk about that,  
10:57:46 13 Mr. Howard, because I want to make sure we're clear on it.

10:57:50 14 You said you know AAA insurance.

10:57:50 15 JUROR HOWARD: Uh-huh.

10:57:52 16 MR. HILL: There is a AAA in this world, the  
10:57:54 17 American Automobile Association.

10:57:57 18 JUROR HOWARD: Right.

10:57:57 19 MR. HILL: Okay. This company --

10:57:58 20 JUROR HOWARD: I got it mixed up then.

10:57:59 21 MR. HILL: This company is USAA.

10:58:02 22 JUROR HOWARD: Oh, okay.

10:58:03 23 MR. HILL: Who do you have business with?

10:58:05 24 JUROR HOWARD: The car insurance.

10:58:07 25 MR. HILL: The AAA?

10:58:09 1 JUROR HOWARD: AAA.

10:58:10 2 MR. HILL: All right. Thank you, sir.

10:58:12 3 Anybody else who is a USAA customer or member?

10:58:23 4 Now, one thing that you heard Mr. Bunt mention is

10:58:25 5 that USAA markets itself to military families -- to

10:58:31 6 military members and military families. But it is not a

10:58:35 7 military-affiliated organization. It is a private company,

10:58:41 8 okay?

10:58:41 9 Is there anybody that thought USAA was somehow

10:58:46 10 affiliated -- part of the U.S. military? No? Everybody

10:58:55 11 understand that's a private company? All right.

10:58:58 12 Now, is there anybody here that just has

10:59:02 13 particularly strong feelings toward USAA? You like them a

10:59:07 14 lot or maybe you don't. Anybody with feelings one way or

10:59:13 15 the other?

10:59:14 16 Now, let me ask the same question about my

10:59:18 17 client -- about Wells Fargo Bank. Most folks have heard of

10:59:22 18 Wells Fargo. Is there anybody that has negative feelings

10:59:26 19 toward Wells Fargo?

10:59:29 20 Now, I know we heard earlier from -- from you,

10:59:31 21 Mr. Parras. I appreciate that.

10:59:33 22 Anybody else? Okay. Right here, No. 15, yes,

10:59:38 23 sir?

10:59:39 24 JUROR HOLLADAY: I'd like to go back to your

10:59:40 25 previous question about USAA.

10:59:42 1 MR. HILL: Yes, sir.

10:59:43 2 JUROR HOLLADAY: Just the people that I've worked

10:59:45 3 with in the military that come and go through our

10:59:48 4 anesthesia practice, have had USAA and had positive things

10:59:52 5 to say about that.

10:59:53 6 MR. HILL: Okay.

10:59:54 7 JUROR HOLLADAY: So that might lean me towards --

10:59:56 8 MR. HILL: You think you would start out leaning

10:59:58 9 toward USAA because of what you've heard about them before?

11:00:01 10 JUROR HOLLADAY: Yes, sir. That and just my

11:00:03 11 negative experience with my wife and the bank in the past.

11:00:06 12 MR. HILL: All right. Also, about that,

11:00:09 13 Mr. Holladay, do you think that experience -- negative

11:00:12 14 experience that your wife had with a bank in the past -- it

11:00:15 15 wasn't Wells Fargo Bank, was it --

11:00:16 16 JUROR HOLLADAY: No, sir.

11:00:18 17 MR. HILL: All right. But you think just because

11:00:19 18 of that negative experience with a bank, that my side of

11:00:22 19 the case might start out behind because of --

11:00:26 20 JUROR HOLLADAY: Maybe.

11:00:27 21 MR. HILL: I appreciate that, sir.

11:00:30 22 All right. Anybody else that had USAA thoughts?

11:00:33 23 Yes, sir, No. 28?

11:00:35 24 JUROR CALLISON: Actually it was more about Wells

11:00:43 25 Fargo. And I put it in my written response, that I've

11:00:44 1 heard some -- a lot of negative reviews in our little town  
11:00:48 2 about our local branch.

11:00:49 3 MR. HILL: Problems with a local branch, you've  
11:00:51 4 heard people talk about?

11:00:52 5 JUROR CALLISON: Yes.

11:00:53 6 MR. HILL: Okay. Anything about that that would  
11:00:54 7 cause you to start out -- cause us to start out behind in  
11:00:57 8 your mind?

11:00:59 9 JUROR CALLISON: I'm guessing this is a -- kind of  
11:01:01 10 an app issue. It probably wouldn't cause me --

11:01:04 11 MR. HILL: Okay. All right. I appreciate that,  
11:01:05 12 sir.

11:01:05 13 Let me ask this: Now, we've -- we've covered  
11:01:13 14 jurors that know each other. Does anybody know Judge  
11:01:15 15 Gilstrap? Anybody know Judge Gilstrap from the community?

11:01:18 16 All right. Let me ask, has anyone here ever been  
11:01:25 17 involved with a patent case -- involved with a patent case  
11:01:29 18 in some way? Could be you served on a prior jury in a  
11:01:33 19 patent case or could be you were asked to participate in  
11:01:38 20 some kind of mock trial or study of some sort about a  
11:01:42 21 patent dispute? Anybody ever had any of those experiences?

11:01:48 22 Now, we talked earlier to some of you folks that  
11:01:56 23 have used mobile deposit before. And I got a list here --  
11:02:01 24 let me see hands one more time, those of you that have used  
11:02:05 25 a mobile deposit product for depositing a check.

11:02:09 1 Has anybody used one both ways, used both the  
11:02:15 2 manual capture style and the auto capture style?  
11:02:17 3 Right here, No. 5. Yes, sir, that's Mr. Laird?  
11:02:25 4 JUROR LAIRD: Chase Bank has the auto and manual.  
11:02:29 5 MR. HILL: Did they strike you as that different?  
11:02:30 6 JUROR LAIRD: I turned the auto off because it  
11:02:32 7 didn't work that well.  
11:02:33 8 MR. HILL: Okay. So you turned it off and used  
11:02:35 9 the manual part?  
11:02:36 10 JUROR LAIRD: Uh-huh.  
11:02:37 11 MR. HILL: All right. Anybody else choose to use  
11:02:40 12 both?  
11:02:42 13 Now, as mentioned, because this case concerns  
11:02:47 14 mobile deposit, it concerns checks -- paper checks. And so  
11:02:51 15 I'd like to know how many of you think paper checks are  
11:02:58 16 still really important in your life; you still deal in  
11:03:01 17 paper checks a lot, still use a lot of paper checks?  
11:03:04 18 All right. Let's keep your hands up, please, if  
11:03:06 19 you can. We've got No. 1, 7, 3, 5.  
11:03:10 20 All right. Well, I want to go down the row and  
11:03:10 21 ask a few questions of you folks about the paper check  
11:03:14 22 experience. We'll start with No. 1, Ms. Hutto.  
11:03:17 23 Ms. Hutto, would you say that paper checks are  
11:03:23 24 just as important in your life today as they were, say, 15  
11:03:26 25 years ago?

11:03:27 1 JUROR HUTTO: Yes.

11:03:27 2 MR. HILL: Okay. You still regularly deal in

11:03:29 3 paper checks and have to deposit those?

11:03:32 4 JUROR HUTTO: Yes.

11:03:33 5 MR. HILL: All right. Great. I appreciate that.

11:03:34 6 Let's move on down the row here. We have No. 3.

11:03:36 7 Yes, sir, Mr. Coleman.

11:03:38 8 JUROR COLEMAN: Yes.

11:03:39 9 MR. HILL: Same question.

11:03:41 10 JUROR COLEMAN: No, I don't use them near like I

11:03:43 11 did 15 years ago.

11:03:43 12 MR. HILL: All right. You think they're --

11:03:44 13 JUROR COLEMAN: I still use them quite a bit, but

11:03:46 14 we use a card most of the time, but we use lots of checks.

11:03:51 15 MR. HILL: All right. Declining in importance,

11:03:53 16 would you think, paper checks, just in your personal life?

11:03:55 17 JUROR COLEMAN: Yes.

11:03:55 18 MR. HILL: Thank you.

11:03:56 19 Come on down here. We had No. 6, that's Ms.

11:04:00 20 Martin.

11:04:00 21 JUROR MARTIN: Personal life, no. Checks very --

11:04:05 22 very rarely. Business life, very important.

11:04:08 23 MR. HILL: Very important still in the business?

11:04:10 24 JUROR MARTIN: Yes.

11:04:12 25 MR. HILL: So would you say they're more or less

11:04:14 1 important now than they were 15 years ago, in your personal  
11:04:17 2 experience?

11:04:17 3 JUROR MARTIN: In my -- in my personal life, less  
11:04:19 4 important.

11:04:20 5 MR. HILL: All right.

11:04:20 6 JUROR MARTIN: In my business life, very  
11:04:22 7 important.

11:04:22 8 MR. HILL: Then we'll move on down here.

11:04:26 9 Mr. Cothren.

11:04:27 10 JUROR COTHREN: In my personal life, no, they do  
11:04:29 11 not have the same relevance today they did 15 years ago.  
11:04:34 12 Working for the county, we cut checks for all vendors. I  
11:04:38 13 deal with paying bills every two weeks.

11:04:41 14 MR. HILL: All right. Thank you.

11:04:42 15 Here on the back row, we had a number of hands  
11:04:44 16 also. I would like to ask you folks the same question.

11:04:51 17 Yes, ma'am, No. 8?

11:04:53 18 JUROR HRELJA: Yes.

11:04:55 19 MR. HILL: What do you think, 15 years ago to  
11:04:57 20 today, more important or less important?

11:05:00 21 JUROR HRELJA: It would be the same for me.

11:05:02 22 Probably more important today because now I pay my own  
11:05:06 23 bills. So I am a personal believer of writing a check,  
11:05:09 24 handing it to somebody, believing in the postal service.  
11:05:16 25 Apps kind of scare me a little bit, definitely over the

11:05:18 1 Internet.

11:05:19 2 MR. HILL: All right. And coming on down. We had  
11:05:20 3 a few hands on the back row. Who else says paper checks  
11:05:23 4 still just as important in your life today as they were 15  
11:05:25 5 years ago? Anybody?

11:05:28 6 Yes, No. 14, Ms. McCain?

11:05:31 7 JUROR MCCAIN: They're just as important to me  
11:05:37 8 today as they were 15 years ago.

11:05:38 9 MR. HILL: All right. Thank you, ma'am.

11:05:39 10 What about out here in the audience? Let's see  
11:05:42 11 your hands, just as important today as they were 15 years  
11:05:45 12 ago? Okay. We've got Ms. Perkins. Who else do we have,  
11:05:49 13 up there on the -- okay. Great. Great. I appreciate  
11:05:51 14 that.

11:05:52 15 Now, earlier there was a question about source  
11:05:56 16 code, and I know we heard from Mr. Laird about source code.

11:06:00 17 Is there anybody else that thinks they have  
11:06:03 18 familiarity or some knowledge about source code, about  
11:06:07 19 computer source code, anybody? Any kind of training, any  
11:06:12 20 kind of classes, any kind of insight into how source code  
11:06:16 21 works in a computer?

11:06:21 22 Is there anybody who regularly converts computer  
11:06:25 23 file types as part of either your work or things you do at  
11:06:29 24 home?

11:06:29 25 All right. Mr. Laird.

11:06:31 1 Anybody else regularly -- okay. Right back here,

11:06:34 2 No. 19. That's Mr. Harris.

11:06:40 3 JUROR HARRIS: Some of the devices I use at work

11:06:42 4 generate one file type, have to send it in to the corporate

11:06:46 5 office, and you have to convert it to another file type

11:06:49 6 before you send it in.

11:06:50 7 MR. HILL: So that conversion process, how you

11:06:52 8 convert a file from one type to another is something you're

11:06:55 9 familiar with, sir?

11:06:56 10 JUROR HARRIS: Yes.

11:06:57 11 MR. HILL: Now, I noticed you mentioned also,

11:06:59 12 Mr. Harris, that you've got a Bachelor of Science in

11:07:01 13 computer science; is that right?

11:07:03 14 JUROR HARRIS: Yes, sir.

11:07:03 15 MR. HILL: Did your computer science training for

11:07:07 16 college discuss computer source code, deal in anything of

11:07:08 17 that sort?

11:07:09 18 JUROR HARRIS: That was '86.

11:07:11 19 MR. HILL: Okay.

11:07:11 20 JUROR HARRIS: Your phone's got more than what I

11:07:14 21 dealt with in '86.

11:07:15 22 MR. HILL: All right, then.

11:07:16 23 Now, let me ask, this is a lawsuit, and there's a

11:07:30 24 Plaintiff in a lawsuit, and there's a Defendant in a

11:07:32 25 lawsuit. That's the way it works. Has anybody here

11:07:34 1 themselves ever had to be a Plaintiff in a lawsuit?

11:07:37 2 Plaintiff in a lawsuit?

11:07:39 3 Okay. I've got a few specific questions I want to  
11:07:43 4 ask of some of you before my time expires that -- of things  
11:07:48 5 you mentioned either in your questionnaire or you mentioned  
11:07:50 6 here in court today.

11:07:51 7 And so I want to -- No. 7, Mr. Cothren, what did  
11:07:56 8 you do before you were a County Commissioner?

11:07:59 9 JUROR COTHREN: I worked in several different  
11:08:01 10 occupations. Probably the most major was the recycled  
11:08:04 11 paper industry. I was a salaried employee for quality  
11:08:09 12 control, purchasing, chipping, I wore many hats.

11:08:13 13 Construction work. It's been a long time ago,  
11:08:20 14 that's the ones I can remember.

11:08:21 15 MR. HILL: All right. Very good. Thank you, sir.

11:08:23 16 Also then, No. 9, if I can, that's Ms. Carpenter.

11:08:29 17 Ms. Carpenter, you mentioned you had been on a  
11:08:32 18 prior federal jury service in this courtroom?

11:08:34 19 JUROR CARPENTER: Yes.

11:08:35 20 MR. HILL: Do you remember what kind of case it  
11:08:36 21 was?

11:08:37 22 THE COURT: Ma'am, please -- please stand up,  
11:08:40 23 ma'am.

11:08:41 24 JUROR CARPENTER: No.

11:08:42 25 MR. HILL: You don't remember? Was it a patent

11:08:45 1 case?

11:08:45 2 JUROR CARPENTER: Something about Sony is all I  
11:08:47 3 can remember.

11:08:47 4 MR. HILL: All right. Did you serve through the  
11:08:50 5 whole case, and y'all made a decision?

11:08:52 6 JUROR CARPENTER: No, they came back from lunch  
11:08:53 7 and they had settled.

11:08:55 8 MR. HILL: All right. All right. Thank you,  
11:08:57 9 ma'am.

11:08:57 10 Now, let me ask right next to you here,  
11:09:00 11 Mr. Howard.

11:09:00 12 THE COURT: You have five minutes remaining,  
11:09:02 13 counsel.

11:09:02 14 MR. HILL: Thank you, Your Honor.

11:09:03 15 Mr. Howard, you mentioned earlier that you had  
11:09:06 16 served on a civil case once before or had been called for  
11:09:08 17 one, but they let you go, because before they got started,  
11:09:11 18 you said you already had your mind made up.

11:09:14 19 JUROR HOWARD: Yes, sir, because it was an inmate  
11:09:16 20 suing the guards.

11:09:18 21 MR. HILL: Okay. All right. Well, that -- my  
11:09:20 22 question is, do you have your mind made up in this case?

11:09:22 23 JUROR HOWARD: No.

11:09:23 24 MR. HILL: All right. Is there anybody that does  
11:09:25 25 have their mind made up in this case?

11:09:28 1 Okay. Thank you.

11:09:29 2 Let's look here to No. 14, please, Ms. McCain.

11:09:37 3 Let me ask you a similar question, Ms. McCain.

11:09:40 4 You also mentioned serving on a civil case in Marion County

11:09:44 5 three years ago, I think you said. Do you remember what

11:09:47 6 kind of case that was?

11:09:49 7 JUROR MCCAIN: Dissolving parental rights.

11:09:56 8 MR. HILL: Okay. All right. Very good. Anything

11:09:57 9 about that experience you think would impact your thoughts

11:10:00 10 about this case?

11:10:01 11 JUROR MCCAIN: No, sir.

11:10:02 12 MR. HILL: All right. Thank you, ma'am.

11:10:10 13 Ladies and gentlemen, I know, as Mr. Bunt

11:10:12 14 mentioned, there's not a question that we can always ask

11:10:14 15 that triggers the thought in everybody's mind of, you know,

11:10:14 16 if the lawyer -- or may have triggered the thought in your

11:10:20 17 mind -- if the lawyer had just asked me this question, he

11:10:23 18 would have learned something about me that he probably

11:10:26 19 needs to know. He would learn something about my past

11:10:30 20 experiences that might impact on my service in this case.

11:10:34 21 And that's the challenge of these things is, we

11:10:36 22 only have limited amount of time. There's a lot of folks.

11:10:39 23 We only get to talk to you for a short period of time.

11:10:42 24 But I would ask if any of you have anything that

11:10:44 25 you think in your mind that parties like these in a case

11:10:48 1 over a serious issue ought to know as they try to pick the  
11:10:53 2 fairest jury they can get to hear a case for them, will you  
11:10:57 3 please raise your hand and let me know? If there's  
11:11:01 4 anything that's come up, anything -- any of the questions  
11:11:04 5 you've heard today may have triggered, that have caused you  
11:11:06 6 to think, you know, if they had just asked the right  
11:11:08 7 question, they'd probably want to know this? Anybody?

11:11:15 8 All right. Well, let me say thank you. I  
11:11:17 9 appreciate your time. I appreciate your attention. We  
11:11:19 10 look forward to presenting our case to you. And I want to  
11:11:24 11 thank all of you again for showing up, doing your civic  
11:11:27 12 duty, and participating in jury service because it really  
11:11:30 13 is what makes our civil justice system work.

11:11:33 14 Thank you, Your Honor.

11:11:34 15 THE COURT: All right. Counsel, approach the  
11:11:36 16 bench, please.

11:11:48 17 (Bench conference.)

11:11:48 18 THE COURT: I do want to clarify one thing on the  
11:11:51 19 record. I think I misspoke the last time you were up here  
11:11:56 20 and I said I was deducting three minutes from the  
11:11:58 21 Plaintiff's closing. It's from the Defendant's closing,  
11:12:01 22 just to make sure that's clear.

11:12:02 23 All right. Does Plaintiff have any challenges for  
11:12:05 24 cause?

11:12:05 25 MR. SHEASBY: Yes, Your Honor. We challenge for

11:12:08 1 cause Juror No. 8 and Juror No. 11.

11:12:12 2 MR. BUNT: And 25.

11:12:14 3 MR. SHEASBY: And 25, yes, Your Honor.

11:12:16 4 THE COURT: All right. Does Defendant have  
11:12:22 5 challenges for cause?

11:12:23 6 MR. HILL: Yes, Your Honor. We would challenge  
11:12:26 7 for cause No. 4, challenge for cause No. 21, Your Honor,  
11:12:37 8 and also 22 and also 15.

11:12:45 9 MR. MELSHEIMER: 20 had wanted to speak to you.

11:12:50 10 THE COURT: I have a note. I'm going to call  
11:12:52 11 No. 20 up.

11:12:53 12 MR. MELSHEIMER: Thank you, Your Honor.

11:12:53 13 THE COURT: Thank you for reminding me.

11:12:55 14 All right. That means I'll send the panel to  
11:12:58 15 recess except I'll retain, so that I can talk with them  
11:13:02 16 here at the bench in your presence, No. 4, No. 8, No. 11,  
11:13:11 17 No. 15, No. 20, No. 21, No. 22, and No. 25. Does anybody  
11:13:22 18 have anything different?

11:13:24 19 MR. SHEASBY: Your Honor, the only thing I have  
11:13:26 20 different is that Juror No. 1 said she had an issue that  
11:13:29 21 prevented her from serving this week, and perhaps we may  
11:13:33 22 want to ask her about that.

11:13:35 23 THE COURT: That's right.

11:13:36 24 Okay. You have anything different, Mr. Hill?

11:13:38 25 MR. HILL: No, sir.

11:13:38 1                   THE COURT: Okay. All right. If you'll return to  
11:13:41 2 your seats, gentlemen.

11:13:42 3                   MR. SHEASBY: Thank you, Your Honor.

11:13:43 4                   (Bench conference concluded.)

11:13:44 5                   THE COURT: Ladies and gentlemen, I'm about to  
11:13:53 6 excuse the members of the venire panel for recess.

11:13:58 7                   However, there are a few of you I'm going to ask to stay  
11:14:00 8 behind so that I can talk with you one at a time here at  
11:14:03 9 the bench.

11:14:06 10                  The members of the panel that I'm going to ask to  
11:14:08 11 stay behind are Panel Member No. 1, Ms. Hutto; No. 4,  
11:14:15 12 Mr. Parras; No. 8, Ms. Hrelja; No. 11, Ms. Smith; No. 15,  
11:14:27 13 Mr. Holladay; No. 20, Mr. Blaylock; No. 21, Ms. Barnard,  
11:14:35 14 No. 22, Mr. Davis; and No. 25, Mr. Traylor.

11:14:42 15                  Everyone else, I'm going to excuse you for recess.  
11:14:47 16 I'm going to ask that you exit the courtroom through the  
11:14:50 17 double doors in the back. We'll -- we'll begin with  
11:14:56 18 Commissioner Cothren here, he can lead the way. But just a  
11:14:59 19 moment. I want to give you a couple more instructions.

11:15:01 20                  First of all, ladies and gentlemen, as you exit  
11:15:04 21 the courtroom through the double doors in the back, if you  
11:15:06 22 will make a left and go around the corner, you'll find two  
11:15:10 23 important things; you'll find the water fountains and  
11:15:12 24 you'll find the restrooms. So take advantage of those  
11:15:16 25 during recess.

11:15:17 1                   Also, ladies and gentlemen, I'm going to ask you  
11:15:19 2 not to leave the building. Stay inside the building,  
11:15:22 3 please.

11:15:22 4                   Number three, don't discuss anything that's  
11:15:26 5 happened in the courtroom this morning. Talk about the  
11:15:29 6 weather, talk about how Baylor is number one in the Big 12  
11:15:36 7 Conference right now, talk about any other matter you want  
11:15:37 8 to talk about, grandchildren, anything you want to talk  
11:15:40 9 about, but don't talk about what's happened in the  
11:15:43 10 courtroom today.

11:15:43 11                   I remind all of you, you have heard absolutely no  
11:15:48 12 evidence in this case. What the lawyers tell you and what  
11:15:53 13 they've said during their questioning this morning is not  
11:15:57 14 evidence in this case.

11:15:59 15                   So don't discuss what's happened in here  
11:16:02 16 whatsoever.

11:16:02 17                   And then when time permits, I will have everyone  
11:16:06 18 back in the courtroom.

11:16:08 19                   But if I could get everyone that I've mentioned  
11:16:12 20 specifically to remain, if you will just step aside and let  
11:16:15 21 those around you that are leaving leave, and then remain in  
11:16:19 22 the seat that you're in, we'll proceed from there.

11:16:22 23                   Those I've not mentioned are now excused for  
11:16:25 24 recess.

11:17:18 25                   (Venire panel out.)

11:17:19 1 THE COURT: All right. Be seated, please.

11:17:21 2 Counsel, approach the bench, please.

11:17:31 3 (Bench conference.)

11:17:32 4 (Open court.)

11:17:34 5 THE COURT: Ms. Hutto, would you come up and join

11:17:56 6 us, please?

11:18:10 7 (Bench conference continued.)

11:18:10 8 THE COURT: Good morning. These are our

11:18:12 9 microphones. If you and I can just talk privately into

11:18:16 10 those microphones, Ms. Hutto.

11:18:18 11 JUROR HUTTO: Okay.

11:18:19 12 THE COURT: When we started today and I asked

11:18:20 13 about people that would have a very difficult time being

11:18:23 14 available if selected to serve, you raised your hand. Can

11:18:25 15 you tell me what your scheduling issues are?

11:18:27 16 JUROR HUTTO: Well, part of it is the -- I work in

11:18:33 17 a small medical office where there's only three employees.

11:18:35 18 THE COURT: I know Dr. Rotzler.

11:18:38 19 JUROR HUTTO: Okay. And so we have no nurse right

11:18:42 20 now, so I'm having to do that job. So there's only a nurse

11:18:44 21 and receptionist and no one else, and we can't seem to find

11:18:48 22 someone to step in and help.

11:18:49 23 THE COURT: Okay.

11:18:50 24 JUROR HUTTO: So I'm having problems with my

11:18:52 25 86-year-old parents being in the hospital, one last week,

11:18:55 1 one this week. You know, I don't have full care of them,  
11:18:58 2 but it's still a stressful matter.

11:19:03 3 THE COURT: Okay.

11:19:05 4 JUROR HUTTO: Anyway, he wrote me a letter. I  
11:19:07 5 don't know if that helps, but...

11:19:09 6 THE COURT: All right. I'll give you that back.

11:19:17 7 That just confirms in writing what you've told me about  
11:19:21 8 Dr. Rotzler and his -- his staffing issues.

11:19:23 9 JUROR HUTTO: Yes.

11:19:24 10 THE COURT: All right.

11:19:25 11 JUROR HUTTO: We have someone hired, but it's  
11:19:27 12 three weeks before they can come to work.

11:19:28 13 THE COURT: Okay. Mr. Bunt, do you have any  
11:19:35 14 questions for Ms. Hutto?

11:19:38 15 MR. BUNT: No, Your Honor, I don't.

11:19:39 16 THE COURT: Mr. Hill?

11:19:41 17 MR. HILL: No, sir.

11:19:41 18 THE COURT: Ms. Hutto, I'm going to ask you to  
11:19:44 19 join the rest of the group outside. Just don't discuss  
11:19:46 20 anything that we've talked about in here.

11:19:48 21 JUROR HUTTO: Okay.

11:19:49 22 THE COURT: Thank you.

11:19:50 23 JUROR HUTTO: All right.

11:19:51 24 (Juror exits courtroom.)

11:19:51 25 THE COURT: I'm not going to excuse Ms. Hutto.

11:19:55 1 Her employer can certainly arrange for temporary help.  
11:20:00 2 That's not anything personal to her, and she did not  
11:20:04 3 indicate anything with her parents that would justify her  
11:20:09 4 being excused. She made it clear she wasn't the sole  
11:20:13 5 caregiver, and the Court's not inclined to excuse an  
11:20:21 6 employee whose employer is having staffing problems. I  
11:20:26 7 just don't think that rises to the level of an excuse from  
11:20:31 8 jury duty. So Ms. Hutto stays on the panel.

11:20:33 9 (Open court.)

11:20:33 10 THE COURT: All right. Mr. Parras, would you come  
11:20:36 11 up, please, sir?

11:20:52 12 (Bench conference continued.)

11:20:52 13 THE COURT: Good morning.

11:20:57 14 JUROR PARRAS: Good morning.

11:20:57 15 THE COURT: If you'll step up, Mr. Parras. These  
11:21:00 16 are microphones, and if you and I can just talk quietly  
11:21:03 17 into those microphones.

11:21:05 18 JUROR PARRAS: Okay.

11:21:06 19 THE COURT: Mr. Hill, do you have questions of  
11:21:07 20 Mr. Parras?

11:21:09 21 MR. HILL: I did.

11:21:09 22 Mr. Parras, when we were talking earlier, you were  
11:21:11 23 explaining to me the problem that you had with your  
11:21:13 24 daughter and dealing with Wells Fargo Bank. I know in your  
11:21:15 25 questionnaire, too, you had written in an opinion about

11:21:19 1 Wells Fargo, mentioning that you thought they were shady.

11:21:21 2 Those are long-held beliefs that you've had?

11:21:25 3 JUROR PARRAS: Ever since they treated my daughter  
11:21:27 4 the way that they did.

11:21:29 5 MR. HILL: Okay. And you think because of the way  
11:21:31 6 they've treated your daughter, that would be the kind of  
11:21:33 7 thing that would cause you to be biased against Wells  
11:21:37 8 Fargo?

11:21:37 9 JUROR PARRAS: I'm afraid I can't set it aside.

11:21:39 10 MR. HILL: Okay. All right. So we'd start out  
11:21:40 11 behind in your mind even -- irrespective of the facts, just  
11:21:44 12 because you've had this bad personal experience with them?

11:21:50 13 JUROR PARRAS: I don't want -- I don't want to put  
11:21:51 14 it that way, but it -- but, to me, what I -- it -- it would  
11:21:56 15 be hard for me to -- to set aside what -- you know, after  
11:22:02 16 I -- after that happened to my daughter and what's happened  
11:22:04 17 to me, you know, with checks -- checks that I told you  
11:22:07 18 about --

11:22:08 19 MR. HILL: Yes, sir.

11:22:09 20 JUROR PARRAS: -- I just -- I just -- you know, in  
11:22:11 21 my mind, I don't know whether Wells Fargo did this or not  
11:22:16 22 or whatever, but I can say that I wouldn't put it past  
11:22:20 23 them.

11:22:21 24 MR. HILL: Okay. All right. Thank you, sir.

11:22:22 25 THE COURT: Mr. Bunt, do you have any questions of

11:22:25 1 Mr. Parras?

11:22:26 2 MR. BUNT: Mr. Parras, do you think --

11:22:28 3 THE COURT: You're going to have to --

11:22:29 4 MR. BUNT: I apologize. Do you think that if the

11:22:31 5 Judge instructs you --

11:22:31 6 COURT REPORTER: Judge?

11:22:31 7 THE COURT: You're going to have to speak up.

11:22:38 8 MR. BUNT: If Judge Gilstrap instructs you to

11:22:41 9 follow his guidance, his instructions, his law, and apply

11:22:46 10 it to the facts of the case, do you think you could do

11:22:48 11 that?

11:22:48 12 JUROR PARRAS: Well, like I said, it would be

11:22:50 13 pretty hard for me to set aside what they did to my

11:22:54 14 daughter. It involved a mortgage. So it was -- it was a

11:22:58 15 pretty big deal.

11:23:00 16 MR. BUNT: Thank you, sir.

11:23:01 17 THE COURT: Mr. Parras, at the end of the day, the

11:23:03 18 question that the Court always has in a situation like this

11:23:07 19 is, can you be fair and impartial and can you treat Wells

11:23:12 20 Fargo the same way you would treat USAA in this case?

11:23:17 21 JUROR PARRAS: I have nothing against them.

11:23:19 22 THE COURT: Do you have -- I understand. But can

11:23:21 23 you treat both parties the same way?

11:23:23 24 JUROR PARRAS: No.

11:23:23 25 THE COURT: You can't do it?

11:23:24 1 JUROR PARRAS: No.

11:23:25 2 THE COURT: Okay, sir. Well, I'm going to let you

11:23:27 3 join the rest of the group outside. Just don't discuss

11:23:30 4 anything we've talked about in here.

11:23:32 5 JUROR PARRAS: All right.

11:23:32 6 MR. BUNT: Can I ask just one more question?

11:23:34 7 THE COURT: All right.

11:23:35 8 MR. BUNT: Do you know that the Wells Fargo that's

11:23:36 9 on the other side, that's the bank that your daughter was

11:23:39 10 using, or is it some other bank?

11:23:41 11 JUROR PARRAS: It's Wells Fargo, the bank.

11:23:43 12 MR. BUNT: Thank you, Judge.

11:23:46 13 Thank you, sir.

11:23:46 14 THE COURT: All right. Thank you, Mr. Parras.

11:23:46 15 JUROR PARRAS: All right.

11:23:46 16 (Juror exits courtroom.)

11:23:46 17 (Bench conference continued.)

11:23:49 18 THE COURT: I'm going to excuse Mr. Parras for

11:23:51 19 cause.

11:23:51 20 (Open court.)

11:23:59 21 THE COURT: Ms. Hrelja, would you come up and join

11:24:01 22 us, please?

11:24:06 23 (Bench conference continued.)

11:24:06 24 THE COURT: Good morning, ma'am.

11:24:26 25 These are the microphones, and if you and I can

11:24:29 1 just talk quietly here at the microphones.

11:24:31 2 JUROR HRELJA: Okay.

11:24:32 3 THE COURT: Mr. Bunt, do you have some questions?

11:24:35 4 MR. BUNT: Yes, Your Honor.

11:24:37 5 THE COURT: Go ahead.

11:24:37 6 MR. BUNT: Ms. Hrelja, you had mentioned that you

11:24:40 7 have some difficulty awarding \$300 million in this case; is

11:24:45 8 that right?

11:24:45 9 JUROR HRELJA: Yes, sir.

11:24:46 10 MR. BUNT: And you just have difficulty with the

11:24:49 11 whole notion of anything being awarded \$300 million; is

11:24:53 12 that correct?

11:24:54 13 JUROR HRELJA: Besides my children?

11:24:56 14 MR. BUNT: Yes, of course.

11:24:58 15 JUROR HRELJA: Yes, sir. A thing, a possession,

11:25:01 16 yes, sir. That's a whole lot of money.

11:25:02 17 MR. BUNT: It is a whole lot. And you understand

11:25:04 18 that's what we're asking for in this case?

11:25:06 19 JUROR HRELJA: Yes.

11:25:06 20 MR. BUNT: And would you have difficulty --

11:25:11 21 JUROR HRELJA: For an app, yes, sir.

11:25:14 22 THE COURT: Ma'am, you understand you haven't

11:25:15 23 heard any evidence at all?

11:25:17 24 JUROR HRELJA: Yes, I know.

11:25:19 25 THE COURT: Let me ask this question: Could you

11:25:21 1 commit to me that if you were selected to serve on this  
11:25:24 2 jury, you would wait until you heard all the evidence and  
11:25:27 3 then after you heard all the evidence, decide the issues in  
11:25:32 4 this case, including if it comes to that, what amount of  
11:25:35 5 money to award the Plaintiff? Or are you telling me that  
11:25:40 6 you couldn't even consider \$300 million, no matter what the  
11:25:44 7 evidence is; that even before you've heard the first  
11:25:48 8 sentence of sworn testimony, your mind's made up? Which --  
11:25:52 9 which of those is it?

11:25:53 10 JUROR HRELJA: I mean, I would listen to it, yes.

11:26:01 11 THE COURT: I don't think anybody disagrees it's a  
11:26:04 12 lot of money.

11:26:04 13 JUROR HRELJA: Yes.

11:26:04 14 THE COURT: But we know the amount of money. We  
11:26:06 15 don't know what the evidence is.

11:26:08 16 JUROR HRELJA: Right.

11:26:08 17 THE COURT: And so you're being asked to make a  
11:26:10 18 commitment when you know one part, but you haven't heard  
11:26:12 19 the other part.

11:26:14 20 My -- my question is: Could you listen to the  
11:26:17 21 evidence and make a decision after you've heard all the  
11:26:21 22 evidence, and if that evidence in your mind supported an  
11:26:26 23 award of that amount, could you do that? Or are you  
11:26:29 24 telling me, Judge, it really doesn't matter what the  
11:26:32 25 evidence is, I could never consider that amount of money,

11:26:36 1 no matter what? That's -- that's my question.

11:26:39 2 JUROR HRELJA: Aside from the amount of money,  
11:26:41 3 it's that -- it's the -- it's an app dealing with money --  
11:26:45 4 like an app on how to deposit your own money?

11:26:48 5 THE COURT: Yes, ma'am.

11:26:49 6 JUROR HRELJA: So I am more of -- I don't really  
11:26:52 7 care what kind of app is. I don't agree with an app to  
11:26:55 8 deposit your check.

11:26:56 9 Now, that, I do stand on. I think you should --  
11:27:02 10 banks and humans and --

11:27:03 11 THE COURT: Well, there are a lot of things in the  
11:27:05 12 world I don't agree with either, but that doesn't mean they  
11:27:09 13 don't happen. And this happens, and there is a patent on  
11:27:11 14 it.

11:27:12 15 JUROR HRELJA: Right.

11:27:12 16 THE COURT: You're not going to be asked do you  
11:27:15 17 think it's a good idea or bad idea.

11:27:15 18 JUROR HRELJA: Okay. Just the --

11:27:17 19 THE COURT: You're going to be asked is: Do the  
11:27:18 20 products that the Defendants use infringe the patent that  
11:27:23 21 the Plaintiff has? And if it does, what's a fair amount of  
11:27:29 22 money to compensate the Plaintiff for that infringement?

11:27:33 23 Those are the questions you'll be asked.

11:27:36 24 And the Plaintiff may very well at the end of the  
11:27:38 25 trial get up and ask the jury to agree with them that the

11:27:44 1 Defendants do infringe, and if they do agree with them that  
11:27:48 2 the Defendants infringe, the Plaintiffs may very well ask  
11:27:51 3 the jury to award \$300 million to compensate them for what  
11:27:56 4 they say is infringement.

11:27:57 5 Now, if you can let the evidence you've heard  
11:28:03 6 through the trial answer that question for you, I think you  
11:28:07 7 probably can serve. If you're telling me you've already  
11:28:12 8 got your mind made up and you couldn't award \$300 million  
11:28:16 9 no matter what the evidence was, then that means you have a  
11:28:19 10 problem with being able to be impartial in the case.

11:28:22 11 So that's really the core of the matter I'm trying  
11:28:25 12 to get to.

11:28:27 13 JUROR HRELJA: Right.

11:28:27 14 THE COURT: I'm trying to decide can you be  
11:28:30 15 impartial and can you let the evidence guide you, or is  
11:28:33 16 your mind made up? So not about whether you like apps or  
11:28:36 17 don't like apps. And I might -- I might be more in  
11:28:39 18 agreement with you there than you would think.

11:28:42 19 But the question is: On the award of damages, if  
11:28:46 20 any, can you -- is your mind already made up? There's just  
11:28:50 21 no way, no how, no matter what the evidence is you could  
11:28:54 22 consider \$300 million? Or -- or could you tell me that  
11:28:57 23 you'd listen to the evidence and let the evidence guide you  
11:29:00 24 as to what's a fair amount of damages if there are any  
11:29:04 25 damages awarded? And that's not a foregone conclusion at

11:29:08 1 this point.

11:29:09 2 JUROR HRELJA: Right. Yes, I can listen to  
11:29:13 3 evidence, and, yes, I can make up my mind on whether or not  
11:29:16 4 to go one way or another.

11:29:19 5 THE COURT: Okay.

11:29:19 6 JUROR HRELJA: Do I think I'm perfect for it? No,  
11:29:21 7 I don't.

11:29:22 8 THE COURT: All right.

11:29:23 9 JUROR HRELJA: I'm just being honest. But, yes, I  
11:29:26 10 mean, I can weigh out situations.

11:29:27 11 THE COURT: Okay. All right.

11:29:27 12 Mr. Hill, do you have any questions?

11:29:29 13 MR. HILL: Ma'am, if -- do you believe you'd be  
11:29:32 14 able to just be fair-minded, keep an open mind, hear all  
11:29:36 15 the evidence, and then decide the case based on the  
11:29:38 16 evidence you hear and the instructions the Judge gives you  
11:29:40 17 at the end?

11:29:41 18 JUROR HRELJA: Sure.

11:29:42 19 MR. HILL: All right. Thank you. That's all I  
11:29:44 20 have.

11:29:44 21 THE COURT: One more -- yes, follow up.

11:29:46 22 MR. BUNT: Are you starting out with the idea that  
11:29:51 23 an app is not worth all that much --

11:29:53 24 THE COURT: Speak up.

11:29:53 25 JUROR HRELJA: Yes, sir.

11:29:53 1 MR. BUNT: Are you starting out with the idea that  
11:29:58 2 an app is not worth that much?

11:30:00 3 JUROR HRELJA: Yes, sir. I know that they get a  
11:30:01 4 great deal of money, so, I mean, I know they probably are,  
11:30:01 5 but to me in that particular realm, no, sir, they're not.

11:30:04 6 MR. BUNT: And sitting here before you've heard  
11:30:07 7 any evidence at all, are you having difficulty with the  
11:30:10 8 idea of being able to award \$300 million even if the  
11:30:14 9 evidence shows that?

11:30:17 10 JUROR HRELJA: Yes, for that particular thing,  
11:30:21 11 yes.

11:30:21 12 MR. BUNT: Thank you, ma'am.

11:30:22 13 THE COURT: All right. I'm going to let you join  
11:30:24 14 the rest of the panel outside during recess through the  
11:30:27 15 double doors. Just don't discuss anything we've talked  
11:30:29 16 about in here.

11:30:30 17 JUROR HRELJA: Okay.

11:30:30 18 THE COURT: Thank you.

11:30:30 19 (Juror exits courtroom.)

11:30:31 20 (Bench conference continued.)

11:30:31 21 THE COURT: Counsel, I'm going to carry this issue  
11:30:49 22 until I hear from the other venire members, and then I'll  
11:30:52 23 let you know.

11:30:55 24 MR. MELSHEIMER: Your Honor, may I go deliver a  
11:30:57 25 message to one of my co-counsel at the table about

11:31:00 1 something?

11:31:00 2 THE COURT: Yes, you may.

11:31:06 3 (Open court.)

11:31:06 4 Ms. Smith, would you join us, please?

11:31:18 5 (Bench conference continued.)

11:31:18 6 MR. MELSHEIMER: Thank you, Your Honor.

11:31:19 7 THE COURT: Good morning.

11:31:20 8 JUROR SMITH: Yes, sir.

11:31:21 9 THE COURT: These are our microphones. You and I

11:31:23 10 can just talk quietly here.

11:31:25 11 During the questioning, the Plaintiffs mentioned

11:31:29 12 that at the end of the trial, they may be asking the jury

11:31:32 13 to award as much as \$300 million. I think most people

11:31:36 14 agree that's a lot of money. You indicated that you

11:31:40 15 thought it was an excessive amount.

11:31:46 16 I guess my question to you, Ms. Smith, is, can

11:31:52 17 you, if you're selected, can you listen to the evidence and

11:31:55 18 wait to make up your mind about what a proper award would

11:32:00 19 be if there's any award -- and there may not be -- but if

11:32:04 20 the jury finds that the Plaintiff's patent has been

11:32:09 21 infringed by the Defendant, then the jury is going to be

11:32:12 22 asked to award an appropriate amount of money as damages.

11:32:15 23 Can you listen to the evidence in the case and

11:32:21 24 decide after you've heard all the evidence what the proper

11:32:24 25 amount of damages, if any, is, even if it's as high as \$300

11:32:30 1 million, or are you telling me that number is so big and so  
11:32:35 2 high, it doesn't matter what the evidence is? I've already  
11:32:37 3 got my mind made up. I could never ever consider an amount  
11:32:40 4 that high. Which of those two do you feel like fits your  
11:32:44 5 situation?

11:32:45 6 JUROR SMITH: I don't believe -- I don't believe I  
11:32:47 7 could agree to that amount.

11:32:48 8 THE COURT: No matter what?

11:32:49 9 JUROR SMITH: Huh-uh.

11:32:49 10 THE COURT: And you understand you've not heard  
11:32:51 11 any evidence in the case?

11:32:52 12 JUROR SMITH: Yes, sir.

11:32:52 13 THE COURT: So it doesn't matter what the evidence  
11:32:53 14 is, you couldn't ever consider that amount?

11:32:56 15 JUROR SMITH: No, sir.

11:32:56 16 THE COURT: Okay. All right. Mr. Hill, do you  
11:32:59 17 have questions?

11:32:59 18 MR. HILL: No, sir, Your Honor.

11:33:00 19 THE COURT: Mr. Bunt?

11:33:01 20 MR. BUNT: No, sir, Your Honor.

11:33:02 21 THE COURT: Ms. Smith, I'm going to let you join  
11:33:04 22 the rest of the panel outside. Just don't discuss what we  
11:33:07 23 talked about in here.

11:33:08 24 JUROR SMITH: Yes, sir.

11:33:09 25 THE COURT: Thank you, ma'am.

11:33:13 1 JUROR SMITH: Yes, sir.

11:33:13 2 (Juror exits courtroom.)

11:33:14 3 (Bench conference continued.)

11:33:14 4 THE COURT: I'm going to excuse Ms. Smith.

11:33:18 5 MR. MELSHEIMER: She made it pretty easy.

11:33:22 6 THE COURT: Did you say something to me?

11:33:22 7 MR. MELSHEIMER: She made it pretty easy, I

11:33:25 8 thought.

11:33:25 9 (Open court.)

11:33:25 10 THE COURT: Mr. Holladay, could you come up,

11:33:25 11 please?

11:33:28 12 (Bench conference continues.)

11:33:28 13 THE COURT: Good morning, Mr. Holladay.

11:33:35 14 JUROR HOLLADAY: Yes, sir.

11:33:35 15 THE COURT: These are our microphones.

11:33:38 16 JUROR HOLLADAY: No problem.

11:33:39 17 THE COURT: If we could talk quietly up here.

11:33:41 18 JUROR HOLLADAY: Sure.

11:33:42 19 THE COURT: I've heard about the bad experience

11:33:44 20 your wife had working at a bank. Now, I gather that was

11:33:47 21 not a Wells Fargo Bank?

11:33:48 22 JUROR HOLLADAY: No, sir.

11:33:50 23 THE COURT: Okay. And you've made it clear that

11:33:53 24 it would be hard for you to award a figure as high as the

11:33:57 25 number that the Plaintiffs mentioned, but I didn't hear you

11:34:01 1 say you couldn't do it. I thought I heard you say you'd  
11:34:05 2 listen to the evidence and let that guide you in regard to  
11:34:07 3 an award.

11:34:08 4 I did hear you say that you have friends at work  
11:34:12 5 who use USAA and have had good experiences with them. I  
11:34:17 6 guess all of this taken together, Mr. Holladay, the  
11:34:23 7 bottom-line question is going to be, if you're selected to  
11:34:25 8 serve on this jury, will the Plaintiff and the Defendant  
11:34:30 9 start out in your mind in the same place, and will you  
11:34:33 10 treat them equally and will you listen to the evidence and  
11:34:37 11 let the evidence and only the evidence guide you in  
11:34:41 12 answering the questions that are going to be in the verdict  
11:34:44 13 form?

11:34:45 14 If you can do that, then I need to know it, and if  
11:34:49 15 for whatever reason here you tell me I cannot be fair and  
11:34:53 16 impartial, I cannot listen to the evidence and let that  
11:34:56 17 guide me as to how I answer any questions, I'm -- I'm just  
11:35:01 18 not able to treat both of these two parties the same and  
11:35:04 19 fairly and equally. Which of those two is it,  
11:35:10 20 Mr. Holladay?

11:35:11 21 JUROR HOLLADAY: My original concern with me being  
11:35:14 22 on this jury was my feelings to lean towards this side --

11:35:19 23 THE COURT: Yes, sir.

11:35:20 24 JUROR HOLLADAY: -- more truthfully, just based on  
11:35:25 25 my partner's experiences with USAA, the things they've

11:35:27 1 said, you know, if you need to get this, if you can get on  
11:35:31 2 it, if you're in the military, how great this was and --

11:35:33 3 THE COURT: Of course, you understand you haven't  
11:35:35 4 heard any evidence in this case?

11:35:37 5 JUROR HOLLADAY: No, that is true. But that's my  
11:35:38 6 initial gut feeling. But I'm not saying I couldn't do it.  
11:35:43 7 I'm just saying if I was -- originally had some -- some way  
11:35:51 8 to be --

11:35:51 9 THE COURT: Yes, sir.

11:35:53 10 JUROR HOLLADAY: I felt like you need to know.

11:35:55 11 THE COURT: Well, and I appreciate that, and  
11:35:56 12 that's completely proper to let both the Court and the  
11:36:02 13 parties know what you bring with you to the process.

11:36:07 14 None of us come up here with a blank slate. We  
11:36:07 15 all have the experiences we've had, and no matter what  
11:36:11 16 those experiences are, at least in this context and in the  
11:36:15 17 position you are as a member of this venire panel, the  
11:36:20 18 question at the end of the day is, you've had some  
11:36:22 19 experiences one way and some experiences another.

11:36:24 20 Can you treat these two -- two parties the same  
11:36:31 21 and can you listen to the evidence and can you let the  
11:36:34 22 evidence be the sole guide as to how you answer any  
11:36:36 23 questions?

11:36:38 24 JUROR HOLLADAY: Yes, sir.

11:36:38 25 THE COURT: That the jury is going to be asked to

11:36:41 1 answer?

11:36:41 2 JUROR HOLLADAY: I could do that, yes, sir.

11:36:43 3 THE COURT: Okay.

11:36:44 4 All right. Mr. Hill, do you have questions of

11:36:46 5 Mr. Holladay?

11:36:47 6 MR. HILL: I do. I do. Mr. Holladay, how are

11:36:49 7 you?

11:36:49 8 JUROR HOLLADAY: Yes, sir.

11:36:50 9 MR. HILL: Let me ask you, I know you mentioned

11:36:51 10 earlier because you started out talking about the

11:36:53 11 experience your wife had with a bank. Of course, I

11:36:56 12 represent a bank in this case, so it makes me nervous, and

11:36:59 13 what I'm curious about is whether, based on that

11:37:02 14 experience, combined with the goodwill you feel toward USAA

11:37:05 15 based on what you've heard from them, when you put both

11:37:08 16 those things together, even though the Judge instructs you

11:37:10 17 that you have to be impartial and fair, do we start out

11:37:13 18 behind, truthfully?

11:37:16 19 JUROR HOLLADAY: I would say no.

11:37:17 20 THE COURT: Okay.

11:37:18 21 JUROR HOLLADAY: In the end, no.

11:37:20 22 MR. HILL: All right. And you think that, even

11:37:22 23 though we're a big bank, you had trouble with them, we're

11:37:25 24 not USAA, you seem to like them, if you looked at the

11:37:28 25 evidence and you thought it went our way, you'd be willing

11:37:30 1 to hand us a verdict in our favor just as willingly as you  
11:37:33 2 would USAA? Or would those other feelings make you have  
11:37:37 3 some reservations not based on the evidence?

11:37:39 4 JUROR HOLLADAY: It might be in the back of my  
11:37:41 5 mind. I'm not sure, to be honest. I'm just not sure.

11:37:44 6 MR. HILL: Okay.

11:37:45 7 THE COURT: Mr. Bunt, do you have any questions?

11:37:48 8 MR. BUNT: Yes, sir. The situation that  
11:37:49 9 happened with your wife --

11:37:49 10 THE COURT: Y'all speak up a little bit.

11:37:51 11 MR. BUNT: I apologize again. The situation that  
11:37:54 12 happened with your wife, it was not Wells Fargo, was it?

11:37:57 13 JUROR HOLLADAY: No.

11:37:58 14 MR. BUNT: But it was a bank?

11:37:59 15 JUROR HOLLADAY: Yes.

11:38:00 16 MR. BUNT: And you understand USAA -- I know you  
11:38:02 17 probably heard of it as an insurance company, but it's also  
11:38:04 18 a bank.

11:38:05 19 JUROR HOLLADAY: Yes, sir.

11:38:06 20 MR. BUNT: Were you aware of that?

11:38:07 21 JUROR HOLLADAY: Yes, sir.

11:38:08 22 MR. BUNT: Okay. So would that affect -- you've  
11:38:10 23 got two banks here in this case, USAA and there's Wells  
11:38:14 24 Fargo, it doesn't affect you either way?

11:38:17 25 JUROR HOLLADAY: No.

11:38:17 1 MR. BUNT: Thank you, sir.

11:38:18 2 THE COURT: Mr. Holladay, bottom line, can you let

11:38:21 3 the evidence control your decisions in this case, or is

11:38:24 4 there anything that would influence you in your decisions

11:38:30 5 that you just can't put out of your mind no matter what?

11:38:33 6 JUROR HOLLADAY: No, I could be in the middle, as

11:38:35 7 you say.

11:38:36 8 THE COURT: You can the follow evidence?

11:38:37 9 JUROR HOLLADAY: Yes, sir.

11:38:37 10 THE COURT: And let that be the sole guide?

11:38:42 11 JUROR HOLLADAY: I could.

11:38:43 12 THE COURT: I appreciate your candor. I'm going

11:38:44 13 to let you join the rest of the panel outside for recess.

11:38:47 14 Just don't discuss anything about what we talked about in

11:38:50 15 here.

11:38:50 16 JUROR HOLLADAY: No problem.

11:38:51 17 THE COURT: Thank you, sir.

11:38:52 18 JUROR HOLLADAY: Thank you.

11:38:53 19 THE COURT: All right. I'm going to deny

11:38:54 20 Defendant's challenge for cause to Mr. Holladay. He

11:38:56 21 remains on the panel.

11:39:03 22 I have no idea what Mr. Blaylock wanted to ask me,

11:39:06 23 but I guess we'll find out.

11:39:08 24 (Open court.)

11:39:08 25 THE COURT: Mr. Blaylock, would you come up,

11:39:11 1 please, sir?

11:39:23 2 (Bench conference continued.)

11:39:23 3 THE COURT: Good morning, Mr. Blaylock.

11:39:29 4 JUROR BLAYLOCK: Morning, Judge.

11:39:31 5 THE COURT: These are the microphones. If you and  
11:39:33 6 I can talk quietly to each other up here, I'd appreciate  
11:39:36 7 that.

11:39:37 8 JUROR BLAYLOCK: Yes.

11:39:38 9 THE COURT: You indicated you had a question for  
11:39:40 10 me. I wanted to give you an opportunity to ask that  
11:39:43 11 question.

11:39:44 12 JUROR BLAYLOCK: Okay. I just don't feel as  
11:39:46 13 though I could be fair in this case. I was -- I remembered  
11:39:51 14 some of the news media about Wells Fargo and how some of  
11:39:58 15 their clients had been treated and what have you. And I  
11:40:02 16 just don't feel as though I'd be a good fit for this --  
11:40:08 17 this -- this jury as far as rendering -- or assisting in  
11:40:13 18 rendering a verdict.

11:40:14 19 I thought that was very insensitive how some of  
11:40:20 20 those people were treated, especially with people who had  
11:40:24 21 issues with their mortgages and what have you.

11:40:27 22 THE COURT: And those feelings are such that you  
11:40:30 23 don't think you could set those aside and let the evidence  
11:40:33 24 guide you? Because you haven't heard any evidence in this  
11:40:37 25 case so far.

11:40:37 1 JUROR BLAYLOCK: No, I realize that, Judge. But  
11:40:39 2 it's just the fact that a company that large could be that  
11:40:44 3 insensitive. I'm a homeowner myself, and I could have been  
11:40:51 4 one of those victims. But I just don't -- I just don't  
11:41:00 5 feel that I could be -- I mean, my feelings towards Wells  
11:41:11 6 Fargo are not -- not as positive as they should be.

11:41:13 7 THE COURT: Okay. All right.

11:41:15 8 JUROR BLAYLOCK: But I will do what I have to do,  
11:41:20 9 but I just needed to share that with you.

11:41:22 10 THE COURT: Well, there's a difference,  
11:41:24 11 Mr. Blaylock, between having feelings but not letting those  
11:41:30 12 feelings control your decisions and relying only on the  
11:41:34 13 evidence --

11:41:35 14 JUROR BLAYLOCK: Okay.

11:41:36 15 THE COURT: -- to control your decision.

11:41:37 16 JUROR BLAYLOCK: Yeah.

11:41:38 17 THE COURT: And then in other cases, there are  
11:41:40 18 feelings that are so strong, they can't be put aside.

11:41:43 19 JUROR BLAYLOCK: Yeah.

11:41:44 20 THE COURT: And no matter what the evidence is,  
11:41:46 21 those feelings are going to control or influence the  
11:41:49 22 answers that you come up with at the end of the day.

11:41:51 23 What I really need to know -- I appreciate your  
11:41:54 24 honesty and candor about your feelings regarding the  
11:41:57 25 Defendant. But which category are you in? Are these

11:42:02 1 feelings that aren't great, but you can set them aside and  
11:42:06 2 let the evidence determine what your ultimate conclusions  
11:42:09 3 are? Or are your feelings such that you just can't set  
11:42:12 4 them aside, and they're going to influence your decision no  
11:42:15 5 matter what the evidence is?

11:42:17 6 JUROR BLAYLOCK: I can set my -- I can set my  
11:42:19 7 feelings aside.

11:42:19 8 THE COURT: Okay, sir.

11:42:21 9 JUROR BLAYLOCK: Yes, I can do that. I just got  
11:42:23 10 kind of caught up in the moment emotionally, but the  
11:42:26 11 evidence hadn't been presented, whatever they have. But,  
11:42:33 12 yes, I can set my feelings aside.

11:42:36 13 THE COURT: Mr. Bunt, do you have any questions of  
11:42:38 14 Mr. Blaylock?

11:42:39 15 MR. BUNT: No, sir, Your Honor.

11:42:40 16 THE COURT: Mr. Hill?

11:42:41 17 MR. HILL: I do, Your Honor.

11:42:43 18 Mr. Blaylock, now you recognize we represent Wells  
11:42:43 19 Fargo?

11:42:43 20 JUROR BLAYLOCK: Yes.

11:42:45 21 MR. HILL: And so we're trying to seat a jury that  
11:42:48 22 will be fair-minded, and we'll both start out in the same  
11:42:51 23 position; we won't start out behind.

11:42:54 24 Do you feel like, based on what you've described  
11:42:55 25 as your feelings towards Wells Fargo, based on what you've

11:42:57 1 seen in the news and the way they've treated people in the  
11:43:01 2 past, that we would start out behind the other side before  
11:43:04 3 the evidence started in this case?

11:43:05 4 JUROR BLAYLOCK: Well, that was my feelings prior  
11:43:08 5 to coming up having this conversation with the Judge, but  
11:43:10 6 he shedded some light in what was a gray area. And I don't  
11:43:14 7 think I would have an issue now because we were talking  
11:43:18 8 about a different situation here.

11:43:20 9 MR. HILL: Uh-huh.

11:43:23 10 JUROR BLAYLOCK: So I just needed some clarity.

11:43:26 11 MR. HILL: Let me ask you one other thing,  
11:43:29 12 Mr. Blaylock. This may be a very close case, okay? The  
11:43:32 13 evidence may be hotly contested.

11:43:32 14 JUROR BLAYLOCK: Yes.

11:43:34 15 MR. HILL: And at the end of the day, you're going  
11:43:35 16 to have to make decisions about credibility and who you  
11:43:37 17 believe.

11:43:38 18 JUROR BLAYLOCK: Yes.

11:43:39 19 MR. HILL: And do you believe that your decisions  
11:43:41 20 on credibility and who you believe will be guided solely by  
11:43:43 21 the evidence or -- or do you believe your view of Wells  
11:43:46 22 Fargo may cause to you judge their credibility more  
11:43:48 23 harshly?

11:43:51 24 JUROR BLAYLOCK: No. Once again, in lieu of  
11:43:52 25 what's -- what I've come to know, I would rely on the

11:43:56 1 evidence.

11:43:56 2 MR. HILL: Thank you, sir.

11:43:58 3 THE COURT: Thank you, Mr. Blaylock. I'm going to

11:44:00 4 let you join the rest of the panel outside during recess.

11:44:03 5 Just don't discuss anything we've talked about in here,

11:44:06 6 sir.

11:44:07 7 JUROR BLAYLOCK: Absolutely, yes, sir.

11:44:08 8 THE COURT: Thank you.

11:44:08 9 (Juror exits courtroom.)

11:44:09 10 (Bench conference continued.)

11:44:09 11 THE COURT: All right. Mr. Blaylock remains on

11:44:11 12 the venire list. He is not excused.

11:44:18 13 MR. HILL: Can I explain 21 to you, Your Honor?

11:44:21 14 THE COURT: Yes, I'd like that.

11:44:23 15 MR. HILL: So she indicated on her questionnaire

11:44:25 16 that she was a member of USAA. In the general voir dire,

11:44:29 17 she did not raise her hand as being a member of USAA.

11:44:32 18 THE COURT: Why don't I bring her up, and I'll

11:44:34 19 just let you question her.

11:44:35 20 MR. HILL: Okay. Thank you, Your Honor.

11:44:36 21 (Open court.)

11:44:36 22 THE COURT: Ms. Barnard, would you come up,

11:44:36 23 please?

11:44:40 24 (Bench conference continued.)

11:44:40 25 MR. HILL: And, Your Honor, as she approaches,

11:44:42 1 just to let the Court know, our issue would be because of  
11:44:44 2 the nature of USAA, a member is -- necessarily has a  
11:44:48 3 financial interest in this case and would be cause to  
11:44:51 4 challenge.

11:44:52 5 THE COURT: Okay. Good morning, ma'am.

11:44:57 6 JUROR BARNARD: Good morning.

11:44:58 7 THE COURT: If you'd step up, please. These are  
11:44:59 8 our microphones, and if you and I can just talk here  
11:45:00 9 quietly.

11:45:01 10 I'm going to let the lawyers ask you just a couple  
11:45:05 11 followup questions real quick.

11:45:06 12 Mr. Hill, do you have some questions for  
11:45:08 13 Ms. Barnard?

11:45:09 14 MR. HILL: Ms. Barnard, in the questionnaire that  
11:45:11 15 you filled out for us before you got here today, you had  
11:45:14 16 indicated that you are a member of USAA, okay? But when we  
11:45:18 17 asked the questions, people raising their hand --

11:45:21 18 JUROR BARNARD: That is incorrect.

11:45:22 19 MR. HILL: That's incorrect?

11:45:22 20 JUROR BARNARD: Yeah.

11:45:23 21 MR. HILL: We just didn't know which one it was.  
11:45:26 22 We were curious.

11:45:26 23 JUROR BARNARD: No, I'm not.

11:45:27 24 MR. HILL: Okay.

11:45:27 25 JUROR BARNARD: Unless I misunderstood the

11:45:27 1 question.

11:45:27 2 MR. HILL: All right. But you don't have banking  
11:45:28 3 or insurance business with USAA?

11:45:31 4 JUROR BARNARD: No.

11:45:33 5 MR. HILL: All right. Thank you, ma'am.

11:45:34 6 THE COURT: All right. Any questions?

11:45:35 7 MR. BUNT: No, Your Honor.

11:45:35 8 THE COURT: Ms. Barnard, thank you for clarifying  
11:45:38 9 that for us. I'm going to let you join of the rest of the  
11:45:40 10 panel outside. Just don't discuss anything we've talked  
11:45:44 11 about in here. Thank you, ma'am.

11:45:44 12 (Juror exits courtroom.)

11:45:46 13 (Bench conference continued.)

11:45:46 14 THE COURT: All right. Ms. Barnard is not  
11:45:48 15 excused. She stays on the panel.

11:45:49 16 What's the problem with Mr. Davis?

11:45:52 17 MR. HILL: Again, it's a questionnaire answer,  
11:45:54 18 Your Honor. He wrote in a pretty interesting point in the  
11:45:58 19 end of his questionnaire where he stated he thought there  
11:46:02 20 was a two-tiered justice system in this country and that it  
11:46:06 21 only worked for some and not others. It made us have  
11:46:09 22 concerns about his view of fairness about the process at  
11:46:12 23 large.

11:46:12 24 THE COURT: We've got two big corporations here.  
11:46:14 25 It's not a -- it's not a David and Goliath situation, but

11:46:17 1 I'm happy to bring him up and let you question him.

11:46:21 2 MR. HILL: Thank you, Your Honor.

11:46:21 3 (Open court.)

11:46:21 4 THE COURT: Mr. Davis, would you come up, please,

11:46:23 5 sir?

11:46:24 6 (Bench conference continued.)

11:46:24 7 THE COURT: Good morning, sir.

11:46:24 8 JUROR DAVIS: Good morning.

11:46:40 9 THE COURT: If you'd step up, these are our

11:46:42 10 microphones. And if you and I can just talk quietly here.

11:46:43 11 I'm going to let these lawyers ask you just a

11:46:46 12 couple more follow-up questions.

11:46:48 13 Mr. Hill, do you have questions for Mr. Davis?

11:46:50 14 MR. HILL: Yes, sir.

11:46:51 15 Mr. Davis, how are you?

11:46:53 16 JUROR DAVIS: I'm all right. How are you?

11:46:54 17 MR. HILL: Good.

11:46:55 18 On the questionnaire you filled out for us, you

11:46:57 19 wrote in there about that you felt like there was a

11:46:59 20 two-tiered justice system in this country and that it's not

11:47:02 21 always fair for everybody. And we just wanted to follow up

11:47:04 22 on that and find if that's something you think influences

11:47:08 23 your decisions or your thoughts about this case?

11:47:10 24 JUROR DAVIS: Not this particular case, no.

11:47:13 25 MR. HILL: Okay. All right. What did you have in

11:47:15 1 mind when you when you said there's --

11:47:17 2 JUROR DAVIS: Well, it was more or less political.

11:47:20 3 I was kind of venting.

11:47:21 4 MR. HILL: All right.

11:47:22 5 JUROR DAVIS: And I -- I apologize.

11:47:23 6 MR. HILL: You don't owe us apologies. But you --

11:47:25 7 you believe in a case like this where you've got a bank on

11:47:29 8 both sides, that you could hear the evidence and decide it

11:47:31 9 fairly and render a judgment based on the evidence --

11:47:35 10 JUROR DAVIS: On the evidence, yes, sir.

11:47:36 11 MR. HILL: All right. Thank you, sir.

11:47:38 12 THE COURT: Mr. Bunt, do you have any questions of

11:47:40 13 Mr. Davis?

11:47:41 14 MR. BUNT: No, Your Honor.

11:47:41 15 THE COURT: All right. Thank you, Mr. Davis. I'm

11:47:43 16 going to let you join the rest of the group outside. Just

11:47:45 17 don't discuss anything we've talked about in here.

11:47:48 18 JUROR DAVIS: Okay. Yes, sir.

11:47:49 19 THE COURT: Thank you, sir.

11:47:49 20 JUROR DAVIS: Thank you.

11:47:49 21 (Juror exits courtroom.)

11:47:49 22 (Bench conference continued.)

11:47:49 23 THE COURT: Mr. Davis remains on the panel.

11:47:51 24 (Open court.)

11:47:51 25 THE COURT: Mr. Taylor, would you come up,

11:47:58 1 please, sir?

11:48:13 2 (Bench conference continued.)

11:48:13 3 JUROR TRAYLOR: Good morning.

11:48:14 4 THE COURT: Good morning, Mr. Traylor. If you'll  
11:48:15 5 step up, these are our microphones, and you and I can talk  
11:48:19 6 quietly here.

11:48:21 7 When questions were asked earlier this morning  
11:48:22 8 about a possible award of \$300 million to the Plaintiff, or  
11:48:28 9 I guess I should say, an award up to or as high as \$300  
11:48:32 10 million --

11:48:32 11 JUROR TRAYLOR: Yes, Your Honor.

11:48:33 12 THE COURT: -- you were pretty definite --

11:48:34 13 JUROR TRAYLOR: Oh, I'm positive, no.

11:48:36 14 THE COURT: -- that you couldn't get there no  
11:48:37 15 matter what?

11:48:38 16 JUROR TRAYLOR: No, sir. No, sir. You might find  
11:48:41 17 a happy medium, but I wouldn't go there.

11:48:46 18 THE COURT: No matter what the evidence was?

11:48:46 19 JUROR TRAYLOR: No, sir. No, sir.

11:48:48 20 THE COURT: Okay. All right. Counsel, you have  
11:48:49 21 questions for Mr. Traylor?

11:48:51 22 MR. HILL: No, sir.

11:48:52 23 MR. BUNT: No, sir.

11:48:53 24 THE COURT: I'm going to let you join the rest of  
11:48:55 25 the panel outside. Just don't discuss what we've talked

11:49:00 1 about in here.

11:49:00 2 (Juror exits courtroom.)

11:49:02 3 (Bench conference continued.)

11:49:02 4 THE COURT: Mr. Traylor is excused.

11:49:04 5 Okay. So No. 6 -- excuse me, No. 4, Mr. Parras,

11:49:08 6 is excused; No. 11, Ms. Smith is excused; and No. 25,

11:49:14 7 Mr. Traylor is excused.

11:49:15 8 The remaining members of the panel are still there

11:49:19 9 and in tact.

11:49:23 10 MR. BUNT: Your Honor, may I -- so we're clear on

11:49:25 11 the record --

11:49:25 12 THE COURT: Yes.

11:49:25 13 MR. BUNT: -- we had a challenge for cause for

11:49:27 14 No. 8, and you said you would carry --

11:49:29 15 THE COURT: Oh, that's correct. I'm going to

11:49:32 16 excuse her.

11:49:35 17 We've had -- we've had so many challenges, I was

11:49:42 18 concerned how many people we were going to have left, and

11:49:44 19 she was a very close call, but given the outcome, I'm

11:49:46 20 satisfied we have more than enough venire members to seat a

11:49:51 21 jury. And there's no need to take a chance on a close

11:49:53 22 call, so I'm going to excuse her.

11:49:56 23 MR. BUNT: Would you mind, Judge, if we go through

11:49:59 24 them one more time?

11:50:00 25 THE COURT: All right. 4 has been excused, 8 has

11:50:02 1 been excused, 11 has been excused, and 25 has been excused.

11:50:11 2 The other challenges for cause are overruled. And  
11:50:15 3 that leaves us with the panel that we have.

11:50:18 4 We're going to seat eight jurors. Each side has  
11:50:22 5 four challenges for cause. That gets us to 16. We've got  
11:50:28 6 three strikes prior to 16, so that should get us through  
11:50:33 7 19. I don't think you're going to reach as far as 25. So  
11:50:42 8 it appears to me that both sides should strike through 19.

11:50:45 9 Does anybody see it differently?

11:50:48 10 MR. HILL: No, sir.

11:50:51 11 THE COURT: How long do you need to strike your  
11:50:53 12 list, counsel?

11:50:55 13 MR. BUNT: Couple of minutes.

11:51:03 14 THE COURT: It's 10 minutes till. I'll give you  
11:51:04 15 15 minutes.

11:51:05 16 MR. HILL: 15 minutes.

11:51:07 17 THE COURT: And then once you've struck your list  
11:51:09 18 and turned them in to the courtroom deputy, I want to see  
11:51:11 19 the four of you in chambers.

11:51:15 20 MR. MELSHEIMER: Thank you, Judge.

11:51:18 21 (Bench conference concluded.)

11:51:18 22 THE COURT: While, counsel exercise their  
11:51:21 23 peremptory challenges, the Court will stand in recess.

11:51:25 24 COURT SECURITY OFFICER: All rise.

12:16:40 25 (Recess.)

12:16:41 1 (Venire panel in.)

12:16:41 2 COURT SECURITY OFFICER: All rise.

12:16:42 3 THE COURT: Please be seated.

12:16:45 4 Ladies and gentlemen, if you will listen carefully

12:17:00 5 as your name is called and then come forward and take your

12:17:02 6 place in the jury box.

12:17:04 7 We're going to seat eight jurors in this case.

12:17:07 8 I'm going to ask that the first four who are called

12:17:10 9 position themselves on the front row of the jury box, and

12:17:13 10 the second four, five, six, seven, and eight, position

12:17:17 11 themselves on the back row, or the second row, of the jury

12:17:21 12 box.

12:17:21 13 And I'd like Juror No. 1, when your name is

12:17:25 14 called, if when you go on to the front row of the jury box,

12:17:28 15 if you would stand in front of the third chair from the end

12:17:34 16 and leave two chairs vacant past where you stand, then

12:17:38 17 we'll let the other jurors stack up behind you.

12:17:41 18 And then if the second row, jurors four -- excuse

12:17:44 19 me, five, six, seven, and eight, if you'd just position

12:17:48 20 yourselves behind the jurors on the front row, that will

12:17:50 21 get us eight jurors in the box, and that will get our eight

12:17:54 22 jurors centered in the middle of the box.

12:17:56 23 There's 14 chairs in that box, and we have eight

12:17:59 24 jurors, and I'd like the jury to be in the center of the

12:18:02 25 box. And it will all work perfectly if whoever's name is

12:18:05 1 called first, will stand in front of the third chair from  
12:18:07 2 the end on the front row. Leave two vacant chairs. And if  
12:18:11 3 everybody on the jury whose name is called would remain  
12:18:14 4 standing until all eight of you are in the box, I'd  
12:18:17 5 appreciate it.

12:18:17 6 So with that, I'll ask our courtroom deputy,  
12:18:19 7 Ms. Lockhart, to call the names of the eight members of the  
12:18:23 8 panel who have been selected to serve as our jury.

12:18:26 9 COURTROOM DEPUTY: Karen Hutto, Andrea Hammond,  
12:18:40 10 Vanessa Carpenter, Paul Howard, Karen Blackmon, Debbie  
12:18:52 11 McCain, Michael Byrd, and Charles Harris.

12:19:14 12 All right. Please be seated.

12:19:20 13 Those of you whose names were not called, I'm  
12:19:25 14 about to excuse you at this time. But I want to excuse  
12:19:29 15 you, ladies and gentlemen, with the sincere thanks and  
12:19:33 16 appreciation of the Court.

12:19:35 17 Every one of you made a sacrifice to be here  
12:19:37 18 today. Every one of you put aside other things that were  
12:19:40 19 important in your lives to be here today, and even though  
12:19:43 20 you weren't chosen to serve on this jury, you were an  
12:19:47 21 integral part of the process, and the process could not  
12:19:50 22 have gone forward as intended by our founders without you  
12:19:54 23 present and available and willing to serve.

12:19:56 24 The Court recognizes that, and though you weren't  
12:20:00 25 selected to serve, each and every one of you on this panel

12:20:03 1 have performed a very real and important public service by  
12:20:07 2 being here, and I want to recognize that on the record and  
12:20:10 3 in public, and I want to thank each one of you for the  
12:20:13 4 sacrifice that you've made to be here.

12:20:15 5 It is no small thing, and our system of justice,  
12:20:19 6 as called for and structured under our Constitution, would  
12:20:22 7 not be able to function without ordinary citizens doing  
12:20:26 8 their duty as you have, to present yourselves willing to  
12:20:30 9 serve when your name is called and you're summoned to  
12:20:34 10 appear for jury duty.

12:20:35 11 So even though you weren't selected in this case,  
12:20:37 12 ladies and gentlemen, thank you very, very much. And I am  
12:20:43 13 confident I speak for both the parties and the lawyers and  
12:20:43 14 the Court staff and everyone here saying how much we  
12:20:48 15 appreciate the sacrifice and the service you've rendered by  
12:20:51 16 being here and allowing us to go forward and select and  
12:20:54 17 seat this jury in this case.

12:20:57 18 I'm excusing you at this time. Would you please  
12:21:02 19 see the clerk's office on the way out? They're going to  
12:21:06 20 want to retrieve those extremely valuable badges that  
12:21:10 21 you're wearing and those numbers that you have.

12:21:11 22 If you have any questions about your appearance  
12:21:11 23 today, if you need any kind of documentation for an  
12:21:15 24 employer, Ms. Clendening in the clerk's office will be more  
12:21:17 25 than happy to help you. I'll refer you to them in that

12:21:20 1 regard. But again, ladies and gentlemen, thank you so much  
12:21:22 2 for your presence and your participation.

12:21:25 3 Those members of the panel not selected on the  
12:21:27 4 jury are excused at this time.

12:21:31 5 COURT SECURITY OFFICER: All rise.

12:21:34 6 (Unselected venire panel members exit the  
12:21:34 7 courtroom.)

12:22:07 8 THE COURT: Everyone but the members of the jury,  
12:22:09 9 please be seated.

12:22:10 10 I'm going to ask Ms. Lockhart, the courtroom  
12:22:13 11 deputy, to administer the oath to the members of the jury  
12:22:16 12 at this time.

12:22:18 13 (Jury sworn.)

12:22:19 14 THE COURT: Please be seated, ladies and  
12:22:34 15 gentlemen.

12:22:34 16 Members of the jury, we're going to recess in just  
12:22:40 17 a few minutes for lunch. I want to give you a few  
12:22:43 18 instructions before we do that, however.

12:22:46 19 First of all, lunch is going to be provided to you  
12:22:50 20 today in the jury room, by the Court. And the Court's  
12:22:53 21 going to provide you lunch in the jury room every day  
12:22:56 22 during the trial.

12:22:57 23 You are not going to have to leave the courthouse  
12:23:00 24 and go out and look for a place to find lunch and then come  
12:23:03 25 back. It's going to be provided to you by the government,

12:23:07 1 by the clerk's office, during each day of the trial.

12:23:10 2 That will make it more convenient for you. It

12:23:12 3 will also allow us to take a shorter break and allocate

12:23:17 4 less time for a lunch break than we would otherwise. That

12:23:20 5 will help us move the case along.

12:23:22 6 Also, ladies and gentlemen, I want to give you a

12:23:27 7 rough idea of what to expect from a scheduling standpoint.

12:23:33 8 Excuse me.

12:23:34 9 During the time that I've been on the bench and

12:23:38 10 tried -- I think you're my 80-something jury trial to

12:23:42 11 conduct, I have found consistently that East Texans who

12:23:47 12 serve on juries in this Court would much rather work a

12:23:51 13 longer day and be away from their families and their

12:23:54 14 businesses a shorter total number of days than have a short

12:23:59 15 day each day but have a greater number of days on jury duty

12:24:03 16 away from their families and their businesses.

12:24:06 17 So some courts start at 9:00 or 10:00 o'clock in

12:24:10 18 the morning and quit at 4:00 o'clock. We're not going to

12:24:12 19 do that. I'm going to start each day at 8:30, I'm going to

12:24:15 20 ask you to be assembled in the jury room and ready to come

12:24:18 21 into the courtroom and begin by 8:30 each day. So try to

12:24:23 22 be here by 8:15 or 8:20 at the latest.

12:24:27 23 And we won't stop at 4:00 o'clock or 5:00 o'clock.

12:24:30 24 We will probably go somewhere in the neighborhood of 6:00

12:24:33 25 o'clock each day. But by starting early and going longer,

12:24:38 1 we will finish this trial in a shorter number of days, and  
12:24:41 2 you'll be back to your workplaces and your families and  
12:24:44 3 your businesses in fewer days than we would any other day.

12:24:48 4 But I want you to be aware of the general time  
12:24:51 5 structure that I'm going to pursue in the trial so that you  
12:24:53 6 can take that into account and be aware of it.

12:24:56 7 Now, when we get to that end of the day time, it's  
12:25:00 8 not an exact science, and nobody needs to look at the clock  
12:25:04 9 for 6:00 o'clock and think the bell is going to ring and  
12:25:08 10 we're going to be through. It's not like that. If we have  
12:25:11 11 a witness that's been on the witness stand for an hour and  
12:25:14 12 a half and they finish and step down at 10 minutes until  
12:25:19 13 6:00, we're not going to start somebody new. We'll quit  
12:25:22 14 for the day.

12:25:23 15 If we have somebody on the witness stand who's a  
12:25:26 16 witness and I'm told by counsel there's another 30 minutes  
12:25:29 17 of testimony and that's at 5:45 we'll probably go to 6:15  
12:25:37 18 and finish that witness. I'm going to have to have some  
12:25:40 19 latitude considering the witnesses and the length of their  
12:25:42 20 testimony.

12:25:42 21 It's not a good practice, in my view, to break a  
12:25:45 22 witness in the middle of their testimony if the Court can  
12:25:47 23 help it. So that 6:00 o'clock is a target. It's not an  
12:25:52 24 absolute hard number either way. It's going to depend on  
12:25:54 25 who's on the witness stand and where we are in the case.

12:25:57 1 But it's a general guideline, and I want you to at least  
12:25:59 2 have that in mind.

12:26:00 3 Also, ladies and gentlemen, during this lunch  
12:26:04 4 break that we're about to take, I'm going to ask each of  
12:26:06 5 you to make sure that Ms. Clendening in the clerk's office  
12:26:10 6 has a good, working cell phone number for you. There  
12:26:13 7 are -- there might be a possibility that we would need to  
12:26:16 8 communicate with you before you arrived at Court or after  
12:26:20 9 you left one day. So I want to be able to know that the  
12:26:23 10 clerk's office has a good, working cell phone number where  
12:26:26 11 you can be reached outside of when you're here in the  
12:26:28 12 courtroom.

12:26:28 13 Speaking of cell phones, I'm going to ask you  
12:26:32 14 after today not to bring your cell phones in the courtroom  
12:26:37 15 and not to bring your cell phones into the courthouse.  
12:26:39 16 Either leave them at home or leave them in your  
12:26:42 17 automobiles.

12:26:43 18 If you've got an important text message or email  
12:26:46 19 you're expecting related to your business, there'll be  
12:26:50 20 opportunities for you to go to your car and look at it if  
12:26:52 21 you need to.

12:26:53 22 But one of the things I'm going to tell you is  
12:26:55 23 that you are not to do any outside research regarding any  
12:26:58 24 of the issues in this case. And when there are eight  
12:27:02 25 different cell phones that are minicomputers in the jury

12:27:06 1 room, it's sometimes tempting for people to say, well, I  
12:27:09 2 didn't understand what those lawyers meant by that term,  
12:27:11 3 let me just Google it. That's not appropriate, and that's  
12:27:14 4 not proper.

12:27:15 5 So to make it easier to follow my instructions  
12:27:18 6 and, to say it another way, to remove the temptation, I'm  
12:27:22 7 going to ask you to leave your cell phones at home or in  
12:27:25 8 your vehicles starting tomorrow. If you brought them with  
12:27:29 9 you today, I'm going to ask you to make sure you leave them  
12:27:31 10 in the jury room after lunch and don't, under any  
12:27:35 11 circumstances, bring a cell phone, an Apple Watch that  
12:27:40 12 would do the same thing, an iPad, any kind of electronic  
12:27:43 13 devices back into the courtroom.

12:27:45 14 Now, you need to understand, the lawyers in the  
12:27:47 15 case have electronic devices, and they're going to have  
12:27:51 16 access to them during the trial. Those are tools that they  
12:27:54 17 use in conducting the trial. But they're under strict  
12:27:59 18 instructions, as is everyone else in here, not to allow  
12:28:02 19 those devices to ring or to interrupt or distract from the  
12:28:05 20 evidence and the presentation of the testimony. If that  
12:28:12 21 happens, I'll deal with it.

12:28:14 22 But if you see counsel with an iPad or a cell  
12:28:17 23 phone, they're permitted to have them under the rules of  
12:28:20 24 the Court. But, in this case, I'm trying to make it clear  
12:28:23 25 to you that, in the Court's view, you should not have a

12:28:26 1 cell phone or electronic device in the courtroom this  
12:28:30 2 afternoon or even in the courthouse starting tomorrow.

12:28:32 3 Now, let me give you a few other instructions.

12:28:38 4 You are not to discuss this case with anyone. That is a  
12:28:43 5 fundamental principle of how civil cases such as this are  
12:28:47 6 tried.

12:28:48 7 At the end of all the evidence, you're going to be  
12:28:51 8 given a document by me called the verdict form. And there  
12:28:56 9 are going to be some questions that you are to answer in  
12:29:00 10 that verdict form. It is critical that the sole source of  
12:29:03 11 the information that you draw upon to decide and answer  
12:29:07 12 those questions must come only from the sworn testimony  
12:29:11 13 presented by the witnesses in open court and subject to  
12:29:15 14 cross-examination during this trial, as well as the  
12:29:19 15 documents and other exhibits that the Court admits into  
12:29:23 16 evidence. Those are the evidence in this case.

12:29:26 17 What the lawyers is -- is not evidence, what  
12:29:30 18 you've heard so far today is not evidence. The evidence is  
12:29:33 19 the sworn testimony from the witnesses and the documents  
12:29:36 20 and other exhibits that the Court has admitted into  
12:29:39 21 evidence.

12:29:40 22 And it is critical that those must constitute the  
12:29:44 23 sole source and the sole universe of the information that  
12:29:47 24 you will draw upon as members of the jury to answer the  
12:29:51 25 questions that are going to be put to you in the verdict

12:29:54 1 form.

12:29:55 2 Consequently, ladies and gentlemen, you must not  
12:29:58 3 discuss the case with anyone. If you do, you risk  
12:30:03 4 violating that fundamental principle, and you risk  
12:30:06 5 jeopardizing the entire trial process.

12:30:09 6 Now, that being said, I want to clarify that.

12:30:11 7 When I say don't discuss the case with anyone, I mean don't  
12:30:14 8 communicate about it in any way. Don't email, don't text,  
12:30:19 9 don't instant message, don't tweet on Twitter, don't post  
12:30:23 10 on Facebook, don't use any social media platforms in regard  
12:30:29 11 to anything that happens with regard to this trial. You  
12:30:33 12 must not communicate about the case in any way.

12:30:37 13 And that also means among the eight of you. Until  
12:30:41 14 all the evidence has been presented and until I instruct  
12:30:45 15 you to retire to the jury room and to consider and  
12:30:48 16 deliberate on your verdict, you must not discuss the  
12:30:52 17 evidence or the case in any way among the eight of you.

12:30:54 18 So throughout the trial, until all the evidence is  
12:30:57 19 in and I've instructed you to retire and deliberate on your  
12:31:03 20 verdict, you must not discuss even among yourselves  
12:31:07 21 anything about the case.

12:31:08 22 Now, when all the evidence is in and when I  
12:31:10 23 instruct you to retire to the jury room and deliberate on  
12:31:13 24 the verdict, at that point, it becomes your duty to discuss  
12:31:17 25 the case with each other in an effort to reach a unanimous

12:31:22 1 decision about the questions that will be included in the  
12:31:24 2 verdict form.

12:31:26 3 So until that moment in time, no discussion among  
12:31:29 4 yourselves at all. After that moment in time, you must  
12:31:33 5 discuss the case among the eight of you in reaching your  
12:31:36 6 verdict. I hope that's clear.

12:31:39 7 Also, I want you to be aware that when you get  
12:31:46 8 home this evening, unless you live alone, the first thing  
12:31:49 9 that's going to happen when you walk through the door is  
12:31:52 10 whoever is there is going to say, well, tell me what  
12:31:55 11 happened in federal court in Marshall today.

12:31:57 12 Don't even try to respond to that question, which  
12:31:59 13 I guarantee you you're going to get, because if you do,  
12:32:03 14 you'll almost assuredly violate my instruction about  
12:32:08 15 discussing the case. Don't discuss, don't communicate  
12:32:10 16 about the case with anyone in any way. That's absolutely  
12:32:11 17 essential.

12:32:12 18 As a matter of fact, ladies and gentlemen, you're  
12:32:15 19 probably going to hear that same instruction from me  
12:32:17 20 repeatedly throughout the trial. You're probably going to  
12:32:20 21 get tired of hearing that instruction from me before the  
12:32:23 22 trial is over.

12:32:24 23 But it is so critical, that I'm going to repeat  
12:32:26 24 it. And it is so important because if it's violated, the  
12:32:31 25 entire trial process is jeopardized. And there's been too

12:32:36 1 much time, money, and effort spent to get this case to this  
12:32:39 2 point to risk jeopardizing it.

12:32:41 3               When I say don't communicate about the case in any  
12:32:44 4 way, I also mean -- and, again, this relates to what I told  
12:32:48 5 you about cell phones. Do not do any research about  
12:32:50 6 anything in this case. Do not go home at night and get on  
12:32:54 7 your computer and pull up any of these law firms or any of  
12:32:57 8 these parties or any of the words and terms you've heard  
12:33:00 9 about. Do not do any research whatsoever.

12:33:05 10               And if you're like me, don't go to the library and  
12:33:07 11 pull a book off the shelf and research the old-fashioned  
12:33:10 12 way. Whether it's online or whether it's in person, don't  
12:33:13 13 do any research of any kind.

12:33:16 14               Also, ladies and gentlemen, this is an important  
12:33:19 15 case. And there's a lot at stake. And cases don't get to  
12:33:23 16 trial in Federal District Court unless they are significant  
12:33:27 17 disputes. That means it's possible -- I don't think it's  
12:33:31 18 likely, but it is possible -- that during the trial, some  
12:33:36 19 outside third party could attempt to contact you to  
12:33:39 20 influence your decision in this case. I don't think that  
12:33:43 21 will happen.

12:33:44 22               But I want you to understand that if at any time  
12:33:47 23 between now and the time I discharge you from your duty as  
12:33:50 24 jurors that you are approached from anybody in any way, any  
12:33:56 25 overture of any kind is made towards you that you feel is

12:33:58 1 improper or off-color or not what it should be, then you  
12:34:04 2 should immediately tell Ms. Clendening. She will report it  
12:34:07 3 to me, and the Court will deal with it. I don't think it's  
12:34:10 4 likely. As a matter of fact, I think it's unlikely. But  
12:34:14 5 it is within the realm of possibility, and I want you to be  
12:34:17 6 aware of it.

12:34:17 7 Finally, ladies and gentlemen, throughout this  
12:34:19 8 trial, there are going to unavoidably be times when you are  
12:34:24 9 going to be coming and leaving during lunch breaks and  
12:34:27 10 other times. You may pass one or more of these lawyers or  
12:34:32 11 one or more of these corporate representatives or their  
12:34:35 12 witnesses in the hallway, on the front steps, on the  
12:34:38 13 sidewalk out front. When that happens, none of them are  
12:34:41 14 going to speak to you. None of them are going to say, good  
12:34:44 15 morning, how are you today? None of them are going to be  
12:34:47 16 friendly and outgoing like we typically are in East Texas.  
12:34:51 17 That's because I've instructed them not to.

12:34:52 18 That's -- goes back to the same bedrock principle  
12:34:56 19 that the only input -- the only information you should have  
12:34:59 20 as a part of this trial and from which you should draw upon  
12:35:03 21 to consider and answer the questions in the verdict form  
12:35:07 22 must be limited to the sworn testimony that's presented by  
12:35:11 23 the evidence -- excuse me, by the witnesses and the  
12:35:14 24 exhibits that the Court admits into evidence. That's it.  
12:35:17 25 And it's critical that that remain the sole source of the

12:35:24 1 information that you have before you.

12:35:25 2 So when one or more of these folks passes by and  
12:35:28 3 doesn't speak and walks right by, don't think they're rude,  
12:35:29 4 don't think they're unfriendly, don't hold it against them  
12:35:33 5 in any way, they're simply doing what the Court has  
12:35:36 6 instructed them to do. And I want to make sure you're  
12:35:40 7 aware of that.

12:35:40 8 All right. I have 25 minutes until 1:00. I'm  
12:35:43 9 told that lunch is waiting for you in the jury room, ladies  
12:35:47 10 and gentlemen. We'll attempt to bring you back and  
12:35:48 11 reconvene as close to 1:15 as possible.

12:35:56 12 With that, and following all the instructions I've  
12:35:58 13 given you, the jury is excused for lunch at this time.

12:36:01 14 COURT SECURITY OFFICER: All rise.

12:36:02 15 (Jury out.)

12:36:03 16 THE COURT: The Court stands in recess for lunch.

12:36:30 17 COURT SECURITY OFFICER: All rise.

12:36:31 18 (Recess.)

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1 CERTIFICATION  
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4 I HEREBY CERTIFY that the foregoing is a true and  
5 correct transcript from the stenographic notes of the  
6 proceedings in the above-entitled matter to the best of my  
7 ability.  
8

9 /S/ Shelly Holmes \_\_\_\_\_  
10 SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
11 Expiration Date: 12/31/20  
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10/30/19  
Date